

The 40th Anniversary of Reform and Opening-Up and Intellectual Property Adjudication in China

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Introduction

The year of 2018 is the 40th anniversary of China's reform and opening-up. At the end of 1978, there occurred a

series of major events affecting the modern development of the Chinese society: first, the 3rd Plenary Session of the 11th Central Committee was held from 18 to 22 December, 1978, clearly declaring that special emphasis had been

placed on “economy-oriented development” and the implementation of the basic national policy of reform and opening-up; second, the Chinese and U.S. governments issued the “Joint Communiqué on the Establishment of Diplomatic Relations” on 16 December, 1978, announcing that China and the United States agreed to recognize each other and formally established diplomatic relations at ambassadorial level as of 1 January, 1979. Later, Chinese Vice Premier Deng Xiaoping was invited to pay an official visit to the United States from 29 January to 5 February, 1979. With the establishment and development of Sino-US trade relations, the IP-related issues became the focus of negotiations between China and the United States. The two sides signed the Sino-US Trade Relationship Agreement on 7 July, 1979, clarifying that “the contracting parties agree to provide natural or legal persons with the protection of patents, trademarks and copyrights on a reciprocal basis”. The Agreement was the first sovereign state agreement on intellectual property rights executed by and between China and the United States. Since then, the China’s patent, trademark and copyright systems got started and have made remarkable achievements after 40-year development.

On the opportune occasion of the 40th anniversary of China’s reform and opening-up, many witnesses or researchers have written articles to recall the establishment and development of China’s intellectual property system. Documents showed that the beginning and evolution of China’s intellectual property system were closely related to the IP disputes between China and the United States. Notably, there were three landmark events: First, the “Memorandum of Understanding on the Protection of Intellectual Property Rights between China and the United States” executed by and between the two sides in 1992 was a bilateral agreement that had a major impact on China’s intellectual property legislation. According to the Memorandum, the Chinese government promised to amend the patent law to provide protection for all chemical inventions, including pharmaceuticals and agricultural chemicals, regardless of whether they are products or processes, extend the term of protection for a patent of invention to twenty years, and stipulate the restrictions on compulsory licenses. In addition, the Chinese government also pledged to join the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Convention for the Protection of Record Producers, and enact laws on preventing unfair competition, and protect trade secrets in accordance with the provi-

sions of the Paris Convention for the Protection of Industrial Property. Second, the Sino-US Intellectual Property Consultation Agreement and its annex, Action Plan for Effective Protection and Enforcement of Intellectual Property Rights, were signed in 1995. In the Agreement, the Chinese government was committed to making more efforts to crack down on piracy on a nationwide scope, taking measures to protect the intellectual property rights of audio-visual products, computer software and publications, establishing a powerful and effective intellectual property protection and enforcement institution, and creating an effective customs implementation system. This had a great impact on the enforcement of intellectual property rights, especially administrative law enforcement, in China. Third, in 1999, the Chinese and U.S. governments reached a bilateral agreement on China’s entry into the World Trade Organization (WTO) and signed the Sino-US Intellectual Property Agreement, which became a decisive event for China’s entry into the WTO.² It can be seen that the Chinese intellectual property system, which commenced at the beginning of reform and opening-up, was undergoing positive changes under the external pressure to constantly promote the development and improvement of the system construction.

I. The progress of China’s intellectual property law

(1) Concerning the trademark system

According to documents, the first Trademark Law of the People’s Republic of China (PRC) was promulgated in 1982, but the trademark system of the PRC was established at an earlier time. At the time of 1949 when the New China was founded, the then Administrative Council first promulgated 11 laws, including the Provisional Regulations Concerning Registration of Trademarks, wherein Article 1 reads: “[T]hese Regulations are formulated in order to protect the exclusive right to use trademarks for general industrial and commercial purposes.” In 1963, the State Council further promulgated the Regulations on the Administration of Trademarks, which includes only 14 provisions. Article 1 thereof stipulates that: “A trademark is a symbol indicative of the quality of a product”. Since it only sets forth provisions concerning trademark obligations, instead of trademark rights, some scholars contended that in comparison with the Provisional Regulations Concerning Registration of Trademarks, the Regulations on the Administration of Trade-

marks completely abandoned the position of the “rights law” and changed the trademark law from the “rights law” to the “administrative law”.

After the reform and opening-up, the New China faced an arduous task of restoring the normal life and reinvigorating the industries. In September, 1978, the State Council issued the Notice on the Establishment of the State Administration for Industry and Commerce, deciding to establish a Trademark Office in charge of trademark registration under the State Administration for Industry and Commerce. On 12 November, 1978, the State Administration for Industry and Commerce decided to resume the nationwide unified trademark registration system and issued the Notice of Reviewing Trademarks. From February to May of 1979, the trademark reviewing work had been substantially completed and there were more than 50,000 trademarks reported all over the country, among which 32,589 marks were finally determined as valid and were approved for registration and certification (wherein 30,900-plus marks were owned by Chinese and 4,400-plus marks were owned by foreigners). The centralized registration of marks was officially resumed as of 1 November, 1979, and the trademarks that had been approved for registration as mentioned above became valid from this date. In May 1979, the Trademark Law Revision Group was established to embark on amendments to the Trademark Law. The draft “Trademark Law” stipulated the principle of protecting the exclusive right to use registered trademarks and protecting the interests of consumers. However, heated discussions arose around the question: whether to implement the “voluntary registration principle” or continue to follow the “overall registration” administration. The main concern lied in that there were only more than 30,000 valid trademarks under the compulsory registration scheme within 30 years since the foundation of the New China. Through repeated discussions and opinion solicitation, the ice was finally broken by the provision that “the State requires ‘compulsory registration’ on some products”. After four years, the Trademark Law of the PRC was adopted at the 24th session of the 5th Standing Committee of the National People’s Congress (NPCSC) on 23 August, 1982, which pioneered China’s legislation on intellectual property rights ever since the reform and opening-up.³ The Trademark Law has been revised three times within 38 years from its promulgation. The first revision was adopted at the 30th session of the 7th NPCSC on 22 February, 1993; the second revision at the 24th session of the 9th NPCSC on 27 October,

2001; and the third revision at the 4th session of the 12th NPCSC on 30 August, 2013. Currently, the legislature is preparing for the fourth revision of the Trademark Law.

(2) Concerning the patent system

According to some historical articles, as early as March 1978, primary leaders of China at that time instructed the former State Science and Technology Committee to conduct researches so as to put forward the Chinese patent management methods for unified patent management. In July 1978, the CPC Central Committee emphasized that “China should establish a patent system” in reply to a report of the Ministry of Foreign Affairs, the Ministry of Foreign Trade and the Ministry of Foreign Economic Relations. The State Council approved the establishment of the China Patent Office in January 1980, which was followed by heated debate over “whether a patent system is necessary in China”. Some leaders in relevant industrial sectors wrote to the CPC Central Committee and the State Council to show their opposition to the establishment of patent system. Some people believed that “the patent system will make it more difficult to popularize scientific and research achievements” and “will cause a major retrogression in the technical field”. In 1981, the 11th version of the Draft Patent Law was submitted to the State Council. As long as the Legal Affairs Bureau of the State Council sent the Draft to relevant departments for comments, the Draft encountered opposition so that the patent law was stranded under pressure. At such a critical point, Vice Premier Deng Xiaoping decisively indicated that “China needs a patent system” and “the patent law should be passed as early as possible”, which put an end to the controversy over whether the patent system is necessary in China. In August 1983, the Draft Patent Law, which had been revised more than 20 times, was passed after deliberation at the executive session of the State Council. After five years discussion, the Patent Law of the PRC was approved by voting at the 4th session of the 6th NPCSC on 12 March, 1984. “The establishment of the patent system had a huge impact on the public who are ignorant of or indifferent to intellectual property rights at that time” and “means the end of the era where scientific and technological achievements are equally shared regardless of the efforts made and others’ intellectual achievements can be usurped without any remuneration”.⁴ The Patent Law has been revised three times within 36 years since its promulgation. The first revision was adopted at the 27th session of the 7th NPCSC on 4 September, 1992; the second revision at

the 17th session of the 9th NPCSC on 25 August, 2000; and the third revision at the 6th session of the 11th NPCSC on 27 December, 2008. China initiated the fourth revision to the Patent Law in 2014. On 5 December, 2018, the executive meeting of the State Council passed the Fourth Revision to the Patent Law and submitted it to the NPCSC for deliberation. At present, opinions have been solicited from the public on the Fourth Revision to the Patent Law, which is expected to be adopted this year.

(3) Concerning the copyright system

According to some historical articles, China and the U.S. established diplomatic relations on 1 January, 1979. In the same month, the two sides signed the Cooperation in the Field of High Energy Physics (hereinafter referred to as the "Sino-US Agreement in High Energy Physics"), which mentioned the mutual protection of copyrights. During the negotiation on economic and trade cooperation, the U.S. once again raised the issue of copyright protection in the hope that both sides shall provide mutual copyright protection in accordance with the provisions of the Universal Copyright Convention before the copyright legislation is established in China. To fulfill the commitment to the negotiations and agreements relating to scientific technologies and trade made between China and the U.S., the then National Publication Bureau submitted to the State Council the Report on Copyright Issues in the Sino-US Trade Agreement in April 1979, which recommended that China should urge all-out efforts to establish the copyright law. To this end, China's copyright legislation was officially launched. Through 11-year hard work, on September 7, 1990, the Copyright Law of the PRC was officially passed after deliberation at the 15th session of the 7th NPCSC.⁵ The Copyright Law has undergone revision twice within 30 years since its promulgation. The first revision was adopted at the 24th session of the 9th NPCSC on 27 October, 2001; and the second revision was adopted at the 13th session of the 11th NPCSC on 26 February, 2010. At present, the Copyright Law is still undergoing the third revision.

As seen from above, firstly, with the reform and opening-up, works for establishing China's three major intellectual property laws of trademarks, patents and copyrights started almost simultaneously, but it took 4 years, 5 years and 11 years respectively before those three laws were finally adopted. This indicates that there are great differences between the three IP laws in terms of the difficulty in legislation and revision on the grounds that those laws vary greatly

from each other in the relevant fields and conflicts of interest, to be specific, the trademark law is mainly aimed to address the issues concerning commercial marks of market entities in market activities, the patent law is set up mainly for the purpose of encouraging and protecting invention-creations, and the copyright law intends to solve the issues concerning creation and dissemination of works. In particular, the trademark law and the patent law have been or will be undergoing the fourth revision, whereas the third revision to the copyright law still has not finished yet ever since its launch in July 2011, and the legislation of the copyright law lasted for 11 years, all of which fully reveal that regardless of the historical stages over the past 40 years of China's reform and opening-up, as the relationship among copyright owners, works users and the public are quite complicated, the conflicts of interests therebetween are fiercer, and meanwhile works are carriers of ideology, so more underlying issues are also involved⁶. Therefore, the legislation of and revision to the copyright law are surely rather complex. Secondly, the three major IP laws have been revised several times. Due to space restrictions, the macro background and detailed contents of each revision will not be expounded here.⁷ However, it is worth mentioning that each revision spurred the improvement of the three major IP laws. Especially around the year 2000, in order to meet the basic requirements for China's entry into the WTO, the legislature systematically revised the provisions of the three major IP laws that were not in compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which provided crucial legal support for China's entry into the WTO under international rules. Moreover, the second revision to the Copyright Law was achieved with several provisions amended in February 2010 for the sake of coordination with WTO's trade dispute settlement, which demonstrated that the Chinese government always attaches great importance to the integration of intellectual property laws with international rules.

II. The development of intellectual property trial in China

(1) Case acceptance

In the early 1980s, as China's central work was shifted to economic construction, the civil trial of the people's courts was no longer limited to cases relating to marriage and family matters, and can be expanded to IP cases. Take

the courts in Jiangsu Province for example. Jiangsu Province is an economically developed area in the eastern coastal region of China, and the acceptance of IP cases in Jiangsu Province is the showing of the general picture at the national level to some extent. Statistics showed that in 1983, the Nanjing Intermediate People's Court accepted the first trademark infringement case in Jiangsu Province (*Nanjing Textile Factory v. Wen Qingchang*); and in 1987, said court accepted the first patent infringement case in Jiangsu Province (*Wuhu Micromotor Factory v. Kunming Electronics Industry Co., Ltd.*). The High People's Court of Jiangsu Province accepted the first copyright infringement case in China in April 1984, in which Jiang Sishen sued Qiao Xuezhu for copyright infringement of the film script *Ward No. 16*.⁸ It should be pointed out that although courts embarked on intellectual property trials almost simultaneously with the IP legislation, and meanwhile academic research on intellectual property had made remarkable progresses,⁹ the general public and market entities' awareness of the IP system was still on a gradual rise. This explained why the number of lawsuits involving IP disputes had been growing very slowly for a long period of time. Only until recent years can we see the "spurt" of intellectual property lawsuits.

Statistically speaking, during the 35 years from 1983 to 2017, the courts of Jiangsu Province accepted a total of 75,701 IP civil cases at first instance. To be specific: (1) from 1983 to 1994 (12 years in total), the IP civil cases at first instance amounted to 583, wherein the number of cases accepted each year was respectively 1, 1, 2, 4, 9, 38, 46, 43, 80, 89, 141 and 129; (2) from 1995 to 2008 (14 years in total), the IP civil cases at first instance added up to 9,827, wherein the number of cases accepted each year was respectively 201, 199, 237, 309, 352, 343, 414, 747, 690, 824, 1,160, 1,040, 1,472, 1,839;¹⁰ and (3) from 2009 to 2017 (9 years in total), the IP civil cases at first instance rose to 65,291, wherein the number of cases accepted each year was respectively 2,933, 3,852, 5,197, 8,526, 7,777, 6,613, 9,173, 10,058 and 11,162. The above data showed that in the past 35 years, the number of IP cases accepted by the courts of Jiangsu Province was positively proportional to the level of economic, social and technological development of the province. Both the number of accepted cases and the development of Jiangsu Province have reached a new stage nearly every decade.

On a national scale, during the 33 years from 1985 to

2017, the courts in China accepted 993,890 IP civil cases at first instance and concluded 959,039 cases. The number of IP administrative cases has been counted separately since 2002. By 2016, the courts in China accepted 44,401 IP administrative cases at first instance and concluded 39,113 cases. The number of IP criminal cases has been counted separately since 1998. By 2016, the courts in China accepted 77,116 IP criminal cases at first instance and concluded 76,174 cases.¹¹ According to the White Paper on the Status of Judicial Protection of Intellectual Property Rights in China annually released by the Supreme People's Court, the total number of IP civil cases at first instance accepted by the courts in China from 2009 to 2017 accounted for 84.71% of the total number of cases accepted between 1985 and 2017.

(2) Analysis of the developing stages of IP trials

Based on the above statistics and in conjunction with the of IP trial work, the development of IP trials in the past 40 years of reform and opening-up can be roughly divided into the following stages:

First stage: prior to 2008. As stated above, Chinese courts started to accept IP cases since the early 1980s. IP trials in the first 30 years were mainly at the embryonic exploration stage, which is characterized by the following features:

First, new types of cases are actively handled. In the early 30 years, especially in the first few years, although the courts accepted a limited number of IP cases, the types of cases had basically covered all areas stipulated in the TRIPS Agreement, including computer software, domain names, new plant varieties, online downloaded music, film works, as well as applications for a preliminary injunction, confirmation of non-infringement, abuse of rights and counterclaims, and so on. A large number of first-of-its-kind cases accepted at this stage have provided experiences for the courts to explore judging criteria for new types of cases, trained a batch of professional judges, and meanwhile laid a solid foundation for the rapid development of IP trials in the last 10 years. In particular, the IP litigation practice in such areas as preliminary injunction, confirmation of non-infringement, and IP counterclaims, directly enriched and promoted the development of China's civil litigation system. Notably, when the court of Jiangsu Province accepted the copyright dispute over the film script *Ward No. 16* in 1984, the 1985 Provisional Regulations on the Copyright Protection of Books and Periodicals of the PRC has not been pro-

mulgated yet, and the 1986 General Principles of the Civil Law¹² and the 1990 Copyright Law were still in the drafting phase. According to some historical articles, before accepting the aforesaid copyright infringement case, the court conducted research and finally decided that according to Article 47 of the 1982 Constitution of the PRC that “citizens have the freedom to conduct scientific researches, literary and artistic creations and other cultural activities” and relevant legal theories, where citizens, legal persons and other entities believe their civil rights are infringed or they have disputes over their civil rights, and no laws or regulations rule out the court’s acceptance or direct acceptance of such cases, the courts should accept the case.¹³ It can be seen that different from other copyright disputes accepted by the courts after the promulgation of the General Principles of the Civil Law and the Copyright Law, the Ward No. 16 case was accepted by the court directly in accordance with the relevant provisions of the Constitution at the beginning of the reform and opening-up where the copyright legislation was still imperfect. This showed a specific example of approaches that the courts in Jiangsu Province adopted for copyright protection in the particular historical period.

Second, importance is attached to the determination of the nature of a case during trial and the amount of damages was relatively low. In other words, at this stage, the court “mainly discussed and intended to resolve the issue of whether protection should be conferred. Even if the court discussed the extent of protection (the ‘strength’ of protection), it was in essence to determine the nature of a case.”¹⁴ “Importance was attached to the determination of the nature of a case” means that great attention was paid to the establishment of judging criteria, and the method of assuming liabilities was mainly cessation of infringement. Of course, a relatively small amount of damages was also closely associated with the low level of economic and technological development of China at that time, and was attributed to the relatively small number of technical inventions with advanced technologies and a higher market value, and few valuable brands.

Second stage: from 5 June, 2008 when the Outline of the National Intellectual Property Strategy (hereinafter referred to as the “Strategy Outline”) was promulgated to 2014.

2008 is the 30th anniversary of China’s reform and opening-up. The promulgation of the Strategy Outline is an important turning point in China’s IP development. With the

in-depth development of the reform and opening-up, China has profoundly recognized the importance of innovative creation and economic transformation and upgrading, vigorously promoted the implementation of innovation strategies and intellectual property strategies, and boosted the construction of an innovative state and the cultivation of endogenous demands of intellectual property protection. This was an important stage for China to implement the creation, utilization, protection and management of intellectual property rights as national strategies. The trials at this stage were characterized by:

First, the number of cases went skyrocketing. The promulgation and implementation of the Strategy Outline had greatly expedited the development of science and technology and the prosperity of cultural creation in China, and as a result, intellectual property disputes also increasingly rose. As mentioned above, 2008 is an important watershed for the development of IP trials, and from that year, the number of cases accepted by courts has experienced rapid growth.

Second, “intellectual property judicial policy” began to play a more and more important role. The “intellectual property judicial policy” epitomizes the macro guidance, basic attitude and judgment value orientation of the intellectual property judicial protection in a certain period of time. IP trials at any time always incorporate judicial policies that comply with and embody the spirit and needs of a particular era. In a long run, for the purpose of promoting economic transformation and upgrading, and boosting the implementation of innovation strategies and intellectual property strategies, the Supreme People’s Court has formulated and promulgated a series of judicial policies, for the purpose of guiding IP trials in courts all over China, according to periodic characteristics of China’s economic and social development and actual needs of innovative development at a specific period, under the guidance of intellectual property laws and with an aim of enhancing the protection of IP rights. China’s IP judicial policy has been continuously improved through the past 30 years. The Supreme People’s Court has been guiding trial practice through judicial policies in an effort to ensure that judging criteria applied for disputes involving the creation, utilization, and transaction of IP rights in different periods, different regions and different fields are consistent, transparent, practical and effective. From 1985 to 2016, the Supreme People’s Court had issued 34 IP judicial interpretations and more than 40 judi-

cial policy documents in order to bring the leading role of judicial protection of IP rights into full play.¹⁵

In this phase, the most crucial judicial policy was the Opinions on Several Issues Concerning IP Trials Serving the Overall Objective under the Current Economic Situation (No. Fafa 23/2009) issued by the Supreme People's Court on 21 April, 2009 (hereinafter referred to as the "Opinions"). The Opinions systematically sorted out the judging criteria for intellectual property cases, such as patent, trademark and copyright cases, with an emphasis on "striving to enhance the pertinence and effectiveness of IP trials in serving the overall objective", and for actively satisfying the demands of the economic and social development after the promulgation of the Strategy Outline. Article 16 of the Opinions also initiatively stipulates "discretionary damages" to make up for the shortcomings of statutory damages, that is, "where the specific amount of losses incurred from the infringement or profits derived from infringement is difficult to prove but there is evidence that the aforesaid amount is obviously greater than the upper limit of statutory compensation, the court shall reasonably determine the amount of compensation over the statutory upper limit by considering all the evidence in the case". So far, Article 16 still plays a vital role in judicial practice. In 2011, the Supreme People's Court explicitly issued a clarion call to take the judicial policy of "strengthened protection, classification of cases, appropriate stringency" as a basic policy of judicial protection of IP rights in China, and clarified its connotation as follows: " 'strengthened protection' is the necessary path, given our socioeconomic situation as well as the domestic and international environment; 'classification of cases' is the necessary requirement, given the nature and characteristics of intellectual property; 'appropriate stringency' is the demand, given the implicit connection between protection of intellectual property and economic development".¹⁶ In addition, the Supreme People's Court has also released the White Paper on the Status of Judicial Protection of Intellectual Property Rights in China, Top Ten Cases and Fifty Typical Cases, and the Annual Report of the Supreme People's Court on IP Cases during a publicity week around the "4.26 World Intellectual Property Day" for 11 consecutive years since 2008. In particular, the judgment gist of typical cases summarized by the Supreme People's Court in the Annual report is of great value to the study on the application of judicial policy through specific cases. At this stage, IP trial as a whole has made prominent progresses in terms of stan-

dardization and system construction.

Third stage: from 2014 to now. At the national level, the State Council issued the "Action Plan for Further Implementation of the National IP Strategy (2014-2020)" in 2014 so as to achieve a seamless connection with the Strategy Outline. Under this background, the IP trials have made significant progress and provided key legal protection for China's economic and social development.

First, a major trial pattern "1+3+n" is formed. The so-called "1+3+n" pattern specifically consists of the IP Court of the Supreme People's Court (1), IP courts at Beijing, Shanghai and Guangzhou (3) and local IP courts (n). In the first place, at the end of 2014, specialized IP courts were established in succession in Beijing, Shanghai, and Guangzhou which were granted with centralized jurisdiction over technical cases such as patent cases. The three IP courts have made great achievements, wherein the Beijing Intellectual Property Court is the most influential one. Second, 18 IP courts were established in Nanjing, Suzhou, Shenzhen, Hangzhou, Ningbo, Jinan, Qingdao, Hefei, Wuhan, Fuzhou, Chengdu, Changsha, Zhengzhou, Xi'an, Tianjin, Nanchang, Changchun and Lanzhou by the end of 2018 for centralized or regionally-centralized jurisdiction over those technical cases within provincial domains. It is expected that new IP courts will be established in the future according to local needs on IP protection. Last but not the least, the IP Court of the Supreme People's Court (hereinafter referred to as the "National Court") was established. The Strategy Outline explicitly required that "study on reasonably centralized jurisdiction over cases involving patents or other technical cases, and explore the possibility of setting up an IP appellate court". In November, 2017, a central leading team for "comprehensively deepening reform" deliberated and approved the Opinions on Several Issues Concerning Strengthening Reform and Innovation in Intellectual Property Trials at its first meeting, which proposed "to study and establish an appeal mechanism at a national level for IP cases". On 26 October 2018, it was decided at the 6th session of the 13th NPCSC to establish a National Court to implement a "leapfrog" appeal mechanism for hearing patent cases (which mainly involve invention patents and utility model patents), new plant varieties, integrated circuit layout design, computer software, monopoly, and technical secrets. That is to say, in a case subject to the above-mentioned centralized jurisdiction, a party who is not satisfied with the first-instance judgment made by an intel-

lectual property court or a local court, who had to appeal to the local court in the past, should appeal to the National Court as of 1 January, 2019. The National Court is a permanent judicial body under the Supreme People's Court. In accordance with the construction requirements for "high starting point, high standards, high level and internationalization", the National Court got itself ready within two months from construction of temporary office place, selection of judges and judge assistants from courts on a national scale to recruitment of senior judges from the public. The National Court was officially unveiled on 1 January, 2019.

The establishment of the National Court is a major revolution in China's intellectual property judicial institutions and mechanisms, and will definitely have an important impact on China's intellectual property system and judicial protection conferred thereby. The significance of establishing the National Court lies in four aspects: "1. It is conducive to unifying and standardizing judging criteria and strengthening the protection of IP rights; 2. It is advantageous to incentivizing and protecting scientific and technological innovations; 3. It is beneficial for creating a good business environment; and 4. It is an inevitable outcome of the comprehensively deepening reform."¹⁷ At present, the centralized jurisdiction of the IP courts and IP tribunals over first-instance cases has basically covered the most economically developed areas in China. It is noteworthy that at an early stage, patent cases were mainly subject to cross-regional centralized jurisdiction of the IP tribunals within the intermediate courts at the provincial capitals. After 2000, the jurisdiction over patent cases was gradually expanded, and many intermediate courts and some grassroots courts at developed areas were granted jurisdiction over patent cases. With the development of China's economy, science and technology, higher requirements are put forward on the trial quality and efficiency of technical cases such as patent cases. As a result, cross-regional centralized jurisdiction over technical cases had been adopted since 2014 until the establishment of the National Court. The above changes were not a simple regression of the jurisdiction scheme for technical cases, but a crucial progress made in establishing China's intellectual property court system.

Second, judicial policy is clearer. On 24 April, 2017, the Supreme People's Court released the Outline of the Judicial Protection of Intellectual Property in China (2016-2020), which is the first outline released for the protection of rights in a particular area by the Supreme People's Court

(hereinafter referred to as the "Judicial Protection Outline"). After summarizing, inducing and extracting successful experiences in the past 30 years, the Judicial Protection Outline clarifies the guiding ideology, basic principles, main objectives, major measures, development planning and blueprints in relation to the judicial protection of intellectual property rights in the New Era, and more importantly, it systematically and creatively proposes eight basic principles, eight goals and fifteen specific measures for the judicial protection of IP rights for the first time. It also clearly stated that the basic policy regarding judicial protection of IP rights, namely "judicial leadership, strict protection, classified policy implementation and proportional coordination" should be adhered to at present and in the future, in place of the long-term implemented policy of "strengthened protection, classification of cases, appropriate stringency". The promulgation of the Judicial Protection Outline was the important landmark showing that China's intellectual property trial system has been greatly improved and China's intellectual property trial capability has become mature.¹⁸

Third, the number of cases has grown rapidly. In recent years, with the rapid development of China's scientific and technological innovation, especially the fast progress of Internet technology and communication technology from PC Internet to smart Internet and now to industrial Internet, the number of IP cases accepted by courts in China is growing at an astonishing speed. Statistically speaking, it took 29 years from 1983 to 2011 for the courts in China to accept 50,000 cases; it took 5 years from 2011 to 2015 for another 50,000 cases; and it only took 3 years from 2015 to 2017 for 100,000 more cases. It was reported that in 2018, the courts on a national scale newly accepted 305,000 first-instance IP cases, including 283,000 civil cases, 13,000 administrative cases and 8,600 criminal cases. Among the first-instance civil cases, there were 195,000 copyright cases, 52,000 trademark cases, 22,000 patent cases and 14,000 other cases.¹⁹ It means that the number of first-instance civil cases has increased from more than 200,000 in 2017 to nearly 300,000 in 2018. Such a sharp rise of IP cases occurred only within one year. The current rapid growth of IP cases can be firstly attributed to the huge increase in innovative and creative achievements; and as a consequence, the number of infringement disputes rises as well, wherein the number of copyright cases grows at the fastest speed and accounts for the largest portion. The number of first-instance copyright cases accepted at the national level in re-

cent years is presented as follows: 66,690 cases were accepted in 2015, which was an increase of 12.1% year-on-year and made up of 60.97% of the overall first-instance civil IP cases that year; 86,989 cases were accepted in 2016, which was an increase of 30.44% year-on-year and accounted for 63.7% of the overall first-instance civil IP cases that year; 137,267 cases were accepted in 2017, which was an increase of 57.80% year-on-year and constituted 68.28% of the overall first-instance civil IP cases that year; and 195,000 cases were accepted in 2018, which was an increase of 52% year-on-year and occupied 68.9% of the overall first-instance civil IP cases that year. It indicates that under the digital cyber environment, China's copyright granting mechanism and transaction rules do not work well, and the existing copyright law cannot satisfy the requirements for the development of cultural industry and the massive use of works. At the same time, there have constantly emerged new types of cases involving various disputes over IP rights, unfair competition and anti-monopoly concerning novel technologies and fresh-new business modes. However, challenges go hand in hand with opportunities. Judging from another perspective, it also indicates that the intellectual property trials in China are embracing a vigorous development.

As for the comparative analysis of the development stages of IP trials, reference can be made to "40 Major Judicial Cases in China's 40 Years of Reform and Opening Up" released by the Supreme People's Court at the end of 2018. As stated above, although the courts on a national scale tried a large number of first-of-its-kind cases at an early stage, only 4 IP cases were selected into the "40 major judicial cases". Among them, only one case, *Peking University Founder Group Co., Ltd. v. Beijing Gaoshu Tianli Technology Co., Ltd.*, occurred in the early stage (it was a dispute over computer software copyright infringement, in which the legitimacy of "trap evidence" in IP lawsuits was admitted for the first time, 2001-2002). The other three cases were concluded in the last 8 years, which are *Beijing Tencent Technology Co., Ltd. v. Beijing Qihoo Technology Co., Ltd.* (it was the first unfair competition case involving users' privacy protection that established the legitimate boundaries of commercial speech of security software, 2011), *Huawei Technologies Co., Ltd. v. U.S. Digital Interaction Group* (the first antimonopoly case won by a Chinese enterprise against a foreign enterprise, 2013), serial cases on "Jordan" trademarks (important transnational intellectual prop-

erty cases, 2016).²⁰ Those cases are in association with the rapidly developed Internet platform economy, standard-essential patents (SEP) and names of celebrities, which demonstrates that IP rights, anti-unfair competition and anti-monopoly law have an unprecedented impact on and relevance to China's economic and technological development and globalization.

III. Unprecedented consensus reached on strict protection

Over the 40 years of reform and opening-up, China's intellectual property system has experienced the developmental process that lasted for nearly three hundred years in western countries and has made great achievements. In general, however, China's intellectual property protection cannot be accomplished to an ideal state in one step. Nor is it possible to do so. As a result, the judicial protection route has changed dynamically over a long period of time: active choice (due to the requirements of reform and opening-up) → passive protection (under external pressures) → gradually raised protection levels (combination of external pressures and endogenous demands) → active protection (combination of endogenous demands and external pressures). The above protection route is so complicated, but it fully meets the different protection needs at various development stages of China. To be specific, first of all, the developmental process of China's intellectual property trials in the past 40 years of reform and opening-up has repeatedly proved the following viewpoints: 1. intellectual property has always been, in essence, a public policy of a country; 2. intellectual property protection is a double-edged sword and shall be utilized properly to foster the economic and social development of a country; 3. intellectual property protection must accord with the phased characteristics of economic and social development of a country, and judicial protection can neither blindly surpass, nor apparently lag behind the phased needs of economic and social development; and 4. the philosophy and judging criteria for judicial protection of IP rights must be constantly adjusted as appropriate along with the ongoing economic and social development so as to be more compatible therewith. Second, as a matter of fact, the order and proportion of external pressures and endogenous demands on judicial protection vary at different stages of social development. More specifically, China in its early days was obviously lacking in ade-

quate capacities for intellectual property creation. Although establishing an intellectual property system was a strategic choice initiatively made by China on the basis of the reform and opening-up policy, it was more because of external pressures that China strengthened judicial protection of IP rights at the operational level. But with the growth of China's economic and social development, protection of IP rights was not only under external pressures, and endogenous demands also played a more important role. Especially at the current stage, more incentives for the protection of IP rights come from endogenous demands, and external pressures assist in improving China's intellectual property system.

Different protection routes, especially different incentives for protection at various stages, result in that several key issues in China's judicial protection always reoccur at different developmental stages. It can be said that along with the establishment and development of the intellectual property system, discussions on those basic issues do not seem to have undergone any fundamental change. To be specific, the following are the major issues in the judicial protection of IP rights in China:

(1) Judicial protection and amount of damages. In infringement cases, the amount of damages has always been a hard issue in judicial practice. On 23 June, 2014, the National People's Congress (NPC) stated in the Report on the Implementation of the Patent Law: "the enforcement of patent rights is now confronted with some difficulties, such as 'long duration, difficulty in collecting evidence, high cost and low compensation', as well as ineffective execution of judgments, which altogether frustrates enterprises from developing technological innovations and protecting their legitimate rights and interests under the patent law." Three years later, on 28 August, 2017, the NPC reemphasized the above situation in its Report on the Implementation of the Copyright Law.²¹ Some scholars argue that low damages mainly result from inadequate evidence adduced by right holders, but because of a considerable amount of "commercialized" cases, the amount of damages when accumulated together is large. Nevertheless, the comments in NPC's report should first come from the opinions of right holders, and a small damage award is a fact that cannot be ignored. It can be attributed to the following reasons: one is the judicial philosophy. Over a long period of time, especially in the early phase of judicial practice, emphasis was placed on the cessation of infringement rather than damages, because traditionally it was believed that the judgment on ces-

sation of infringement had achieved the goal of market clearing, the market interests of right holders had been fundamentally protected and damages would be enough if it "indemnified" the right holders' loss. However, right holders are of a view that low damages are not sufficient to indemnify the losses they suffered, and would not deter infringers, especially those "professional" infringers who live on infringement and commit infringement repeatedly at different places with low costs. The other is that in a very long period of time, the market value of intangible properties remains low. Market value of intellectual property is associated with the scientific and technological development and increase gradually. It is believed that the tendency to increase the damages awarded in judicial judgments is in line with the law of the judicial protection of IP rights to some extent. The process for increasing patent damages in Japan is substantially the same as the one in China. "In 1990s, there was a prevailing view among IP practitioners that damages were too low in judicial practice in Japan to stimulate innovations especially when the judicial policy of 'encouraging patents and innovations' was widely accepted in the world at that time. After realizing that Japan was weak in patent protection and disadvantageous in world competition as compared with the U.S. which took measures to strength patent protection and foster innovations, Japan raised the amount of damages by revising the method for damages calculation in law and through a series of judicial practices." It is noteworthy that Japan revised its patent law by making a series of procedural and substantive amendments in 1998. More importantly, Japan totally embraced the transition from "indemnification for damages" to "inhibition of infringement". Damages are not awarded merely according to the losses actually suffered by the patent holders. Instead, they are properly calculated for the sake of preventing frequent infringements,²² which provides a valuable reference for how to solve the problem of low damages in China.

(2) Judicial protection and the civil-administrative binary system. The civil-administrative binary system gives rise to several problems. One is that the criteria for grant and affirmation are in conflict with the criteria for determining infringement. Take trademark cases for example. Where civil procedures conflict with administrative procedures, courts hearing infringement cases often feel powerless in dealing with malicious trademark lawsuits, in which trademarks were obviously registered preemptively in bad faith

and those trademark holders are only “formally eligible”. This is disadvantageous to the protection of prior right holders.²³ The other is that the trial lasts too long. This is especially true for infringement cases in relation to invention patents that need to undergo substantive examination. Disputes over patent infringement are often suspended for a long time because they have to wait for the results of patent invalidation cases which, however, usually go through the first-instance and second-instance administrative proceedings after the invalidation proceedings. If patent infringement cases are tried without awaiting the conclusion of administrative proceedings, the determination of damages in infringement cases may be apparently or potentially affected.

(3) Judicial protection and traditional litigation mechanism. In comparison with traditional civil cases, IP cases have the following salient features: First, the object of rights is intangible, which makes it difficult to determine the amount of damages; second, acts of infringement are often concealed and elusive, and it is difficult for right holders to collect evidence; third, the determination of infringement often involves new technologies, and it is really hard to ascertain technical facts. Therefore, it is really hard to provide sufficient protection for IP rights according to the way of thinking and mechanism of traditional civil litigation. China’s civil litigation system is established mainly to handle traditional civil cases, and is, to some extent, a combination of the “inquisitorial system” and “adversary system” built up on the foundation of the traditional “inquisitorial” litigation mode. Therefore it is “incompatible with” IP cases, especially refined trials required by technical cases. For instance, strict time limits for trials result in that pre-trial procedures are less mature, evidence submitted before or during trials are insufficient, and too many cases enter the court hearing. At the same time, the expert witness system, the technical investigator system and rules on the spoliation of evidence still need to be improved. These suffice to prove that China’s unadvanced civil litigation mechanism is one of the significant factors that affect the protection level and restrain the protection effect.

Encouragingly, broad consensus has been reached on reinforced protection of IP rights. On 13 March, 2015, the State Council released the Several Opinions on Deepening the Reform of Systems and Mechanisms to Accelerate the Implementation of Innovation-driven Development Strategies, which first suggests: “Implement intellectual property

protection systems strictly.” It was definitely delivered at the 19th National Congress of the Communist Party of China (CPC) that “intellectual property creation, protection and utilization must be strengthened and reinforced”. In comparison with “intellectual property creation, utilization, protection and management” mentioned in the Strategy Outline, the new proposal clarified at the 19th National Congress placed special emphasis on the pivotal position and function of “protection” in the overall intellectual property system, which is of practical significance. On 17 February, 2018, the General Office of the Central Committee of CPC and the General Office of the State Council released the Opinions on Several Issues Concerning Strengthening Reform and Innovation in Intellectual Property Trials, with an aim of “giving full play of the leading role of judicial protection of intellectual property, and making a top-level design and plan for judicial protection of IP rights”. On 10 April, 2018, Chinese President Xi Jinping delivered a keynote speech at the opening ceremony of the 2018 annual meeting of the Boao Forum for Asia, pointing out that “strengthening the protection of IP rights is the most important work to improve the system of property rights protection, and is also the biggest incentive to improve China’s economic competitiveness.” Chinese President Xi Jinping stated at the First China International Import Exposition on 5 November, 2018 that China will protect the legitimate rights and interests of foreign-funded enterprises, resolutely punish those who violate the legitimate rights and interests, especially the IP rights, of foreign businessmen, improve the quality and efficiency of intellectual property examination, incorporate the doctrine of punitive damages and greatly raise costs paid for violation of laws.

At present, it has been a normal state that importance and emphasis have been placed on strict protection of IP rights at the national level. According to the survey conducted by the China National Intellectual Property Administration, the public’s recognition rate for IP strategies has increased from 3.7% in 2008 to 85.3% in 2017.²⁴ Currently, the “strictest” protection of intellectual property is put forward as an objective in some economically developed areas in China, such as Shenzhen, Guangdong, Beijing and Jiangsu, on the basis of “strict protection of IP rights”.²⁵ It can be said that those developed areas add pressure on themselves for the following reasons: on the one hand, they are active in technological innovations and advanced in economic development; on the other hand, competition be-

tween different areas of China is fierce in the context of the ever-changing global economic and trading environment, and by announcing the strictest intellectual property protection policies, more investment and innovative talents can be attracted, which shows urgent needs of those areas for innovations, upgraded transformation and better business environment. Only in a fair, transparent and predictable law-based business environment can market entities have the enthusiasm for innovations and interests in investment in innovations, which will therefore foster the enhancement of original technologies and brands.

Of course, some scholars remind that a “subtle” dynamic balance shall be maintained for the protection of IP rights, and “protection by law” is the foundation, and keeping “reinforcing” the protection may have the adverse consequences of imbalance. Nevertheless, the change of expressions reveal, to some extent, that it is a tough and complicated process for the “borrowed” intellectual property system to be localized and become the endogenous demand for self-innovation in China. As said by some scholars, “the localization of intellectual property laws in China is based on the ideologies with its own characteristics, supported by social policies, environment, and culture, with advanced ideological guidance, institutional dynamic transformation and legal spirit reconstruction. Localization of laws is a rational process in pursuit of the rule of law civilization and the self-realization of local legal theories and practical innovations.”²⁶ Thus, it should be pointed out that no matter which term is used, either “strengthening the protection”, “reinforcing the protection”, or “strict protection” or “strictest protection”, the basic connotation is still “to protect by law”. In my opinion, “strict protection” means rights which should be protected will be strictly protected, and those should not, never, so as to achieve a balance between the application of laws and public policy. The two vital aspects of strict protection surely lie in the determination of infringement and reasonable award of damages.

In regard to traditional cases, the rules for infringement determination have been substantively clarified, and more attention should be paid to cracking down on infringements and the effect of judicial protection; whereas for new types of cases, which involve IP issues concerning novel technologies and new business models that include the Internet platform economy, as they are overlapping with the rules of the competition law, the protection and regulation of IP rights become more complicated and need to be better

identified. Those new types of cases, for example, include live sports events, live game shows, game works, short videos, data products, commercialization rights, and etc. New types of cases or new problems that are out of imagination in the past emerge constantly with the development of novel technologies and arouse frequent disputes due to huge conflicts of interests. Therefore, the judicial criteria for infringement determination must stand the test of novel technologies and new business models. How to achieve the policy goal of boosting new economic development is a big challenge facing the judiciary.

With regard to a reasonable damage, it is quite common for local courts to award a large amount of damages for serious infringements. This is also an inevitable response to the strict implementation of IP protection policies by the judiciary. Nevertheless, it should be clarified that strict protection does not mean increasing the amount of damages blindly. At present, the Fourth Revision to the China’s Patent Law proposes to increase the statutory damages to a range from RMB 100,000 to RMB 5 million. Whether such an increase complies with China’s social development needs to be further discussed. A commonly accepted view is that, different from the “re-characterization” in early IP trials in the early stage, the focus of which was to determine the “nature of a case”, current judicial protection attaches equal importance to “re-characterization and quantification”. Thus, “great efforts shall be made to actively and steadily advance the legislative work relating to a special procedure law for intellectual property litigation and to optimize the litigation system to match with the characteristics of IP cases.”²⁷ As for high damages, it is advantageous to guide those parties concerned to adduce evidence on damages, urge independent and impartial third-party institutions to participate, and introduce specialized economic analysis and auditing to assess the market value of IP rights and then conduct refined examination before making a reasonable judgment. In some cases where defendants refuse to provide their financial documents, the court will directly presume that the plaintiffs’ claim for damages is reasonable, in such a way to “force” the parties concerned to get substantially involved in litigation and say “no” to their passive participation in litigation. It can thus be seen that an ideal litigation state in the future is to accurately calculate high damages by way of effective court arguments and economic analysis. To introduce institutions to solve the problems of difficulty in compensation and low damages is a

great subject to work on for achieving strict protection.

Conclusion

In retrospect, the 40 years of China's reform and opening-up is only a short period in human history, but a key stage for the establishment, evolution and growth of China's intellectual property system. In the early 30 years, emphasis was placed on the re-characterization of IP cases, and many first-of-its kind cases occurred. In terms of procedural laws, preliminary or interlocutory injunction, declaration of non-infringement and counterclaims made pioneering contributions to the improvement of China's civil litigation system; and in terms of substantive laws, the judging rules determined through examination of typical cases under three major IP laws were accepted through judicial interpretations or revision to the laws. Thus, the early 30-year IP judicial practice in China has laid a solid foundation for the development of China's IP judicial system. At present, from the perspective of overall innovation strategic development and economic transformation and upgrading, innovations have become the most powerful incentives for China's economic and social development, which has reached a critical stage calling for strict protection of IP rights. While bearing in mind the achievements made in China's IP trials in the 40 years of reform and opening-up, it is very important to study and analyze existing problems and put forward suggestions and opinions for making China's IP trial system better improved. At the same time, the effectiveness of judicial protection is reflected in a refined judgment of each case and wide public recognition, which will pose more challenges to the judiciary and require more efforts to be made. ■

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¹ Introduction to the author: Senior Judge of the Second Rank of Jiangsu High People's Court and National Trial Expert, and Chief Justice of Jiangsu High People's Court from May 2008 to July 2016.

² Han Xiucheng (2018). Stupendous changes: Intellectual property and 40 years of reform and opening-up. *Intellectual Property*, 9. The detailed contents of the Sino-US Intellectual Property Agreement will not be reiterated due to the space restrictions.

³ The SAIC (February 1993). *Ten Years (1983-1993) of China's Trademark* (pp. 95-97 and 130). The Law Press.

Talk to IP practitioners: Dong Baolin: To get out of chaos and let the

trademark law to exert its original function published in Zhichanli (WeChat account) on 18 November, 2018, and last visited on 2 February, 2019.

Li Chen (2018). Review of ideological history of China's Trademark Law in 40 years. *Intellectual Property*, 9.

⁴ Zhao Yuanguo (compiler). *Preparation and promulgation of China's Patent Law* (2003 edition, pp. 41-42). The Intellectual Property Publishing House.

The Report on the Establishment of Patent System in China submitted to the State Council by the original State Science and Technology Commission on 17 October, 1979.

Intellectual Property and 30 Years of Reform and Opening Up (2008 edition, pp. 11 and 306). The Intellectual Property Publishing House.

⁵ Wang Ziqiang (2018). Establishment and improvement of China's copyright legal system. *Intellectual Property*, 9.

Wang Ziqiang (2018). Establishment and development of China's copyright legal system (27 September, 2018). *China Press, Publication, Radio, Film and Television Journal*.

⁶ Deng Yiyu and Zhao Zhibin (2018). Academic research supports the 40-year development of China's intellectual property system. *Intellectual Property*, 9.

⁷ As for the detailed contents about the previous three revisions to the Trademark Law, please refer to: Feng Xiaoqing and Liu huanhuan (2019). Study on the trademark registration system from the perspectives of efficiency and fairness—Comments on the Fourth Revision to the China's Trademark Law. *Intellectual Property*, 1.

As for the detailed contents about the previous three revisions to the Patent Law, please refer to: Gan Shaoning (2018) China's Intellectual Property developed with reform and opening-up. *Intellectual Property*, 9.

As for the detailed contents about the previous two revisions to the Copyright Law, please refer to: Wang Zhiqiang (2018). Establishment and improvement of China's copyright legal system. *Intellectual Property*, 9.

⁸ Jiangsu Chronicle Compilation Committee. *Chronicle of Jiangsu Province • Trial Part (1978-2008)* (2012 edition). Jiang People's Publishing House. Chapter Five: Trial of intellectual property cases (pp. 155-174).

⁹ See supra note 6.

¹⁰ See supra note 8, pp. 155 and 157.

¹¹ See the Outline of the Judicial Protection of Intellectual Property in China (2016-2020) released by the Supreme People's Court.

¹² On 12 April, 1986, General Principles of the Civil Law of the PRC was passed at the fourth session of the 6th NPCSC. Article 94 thereof reads: Citizens and legal persons shall enjoy rights of authorship (copy-

rights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law. This is the first time that New China has clearly defined copyright in her basic law.

¹³ Liu Tianbi. The whole story of “Ward No. 16”, published in *Glorious Course - The Collection of Essays for 50th Anniversary of the Establishment of the Higher People’s Court of Jiangsu Province (1953-2003)* (pp.73-81). The author of this article is the presiding judge of the collegial panel in the case concerning the script “Ward No.16”. He was the then chief justice of the Civil Tribunal of the Jiangsu High People’s Court, and later served as the vice chief justice of the Civil Tribunal of the Supreme People’s Court.

¹⁴ Kong Xiangjun (2018). Reflection and prospect of China’s intellectual property protection—Thoughts based on system and ideology. *Intellectual Property*, 9.

¹⁵ See supra note 11.

¹⁶ See the *White Paper on the Status of Judicial Protection of Intellectual Property Rights in China (2012)* released by the Supreme People’s Court.

¹⁷ How to unify the judging standards? How to deal with a heavy workload with insufficient manpower? Luo Dongchuan and Wang Chuang answered questions from reporters at a press conference, published in China IP (WeChat account) on 29 December, 2018, and last visited on 1 February, 2019.

¹⁸ See supra note 11.

¹⁹ Lin Guanghai. Last year, the courts in China received 305,000 new IP cases, up 40.7% year-on-year, published in China IP (WeChat account) on 12 January, 2019, and last visited on 1 February, 2019.

²⁰ Top 40 major judicial cases within the 40 years of reform and opening-up—Intellectual property part, published in Beijing Intellectual Property Judicial Protection Association (WeChat account) on 26 November, 2018, and last visited on 1 February, 2019.

²¹ The Report of the Law Enforcement Inspection Team of the NPCSC on the Implementation of the Patent Law. Retrieved from www.npc.gov.cn on 23 June, 2014.

The Report of the Law Enforcement Inspection Team of the NPCSC on the Implementation of the Copyright Law. Retrieved from www.npc.gov.cn on 28 August, 2017 and last visited on 2 February, 2019.

²² Zhang Peng (2017). Japan’s ideology and system of calculating the amount of patent infringement damages. *Intellectual Property*, 6.

Mao Yinghong (2017). Research on several issues concerning the calculation of patent infringement damages in Japan and reference to China. *Electronic Intellectual Property*, 6.

²³ Song Jian (2018). Judicial regulation of abuse of trademark rights. *Intellectual Property*, 10.

²⁴ This change is exciting both at the national level and to the public. It was recalled in a historical article: “In 2006, Professor Zheng Chengsi and Wu Handong walked into Zhongnanhai and explained the ‘Legal and institutional recommendations on international intellectual property protection and China’s intellectual property protection’ at the 31st session of the Political Bureau of the Central Committee. It is the first time that the central leadership has collectively concentrated on intellectual property rights, which has significant and symbolic significance in the history of intellectual property development in China.” See supra note 2 for details.

²⁵ On 25 August, 2017, the “Work Plan of Shenzhen for Further Strengthening Intellectual Property Protection under the New Situation” proposed that Shenzhen should try its utmost to first establish the most stringent intellectual property protection system in China by 2020, and form a general intellectual property protection system with judicial protection as a base, administrative protection as a support, and arbitration mediation, industrial self-discipline and social supervision as supplements, so as to increase the punishment for violation of IP rights, optimize the “rule of law” concerning IP rights, effectively crack down on infringement of IP rights, initially outstand the attracting advantage of IP “marsh land”, and significantly increase the attraction to innovative resources at home and abroad. Shenzhen will be built into a national model for strict protection of intellectual property rights and an intellectual property protection highland that is influential to the world. On 7 November, 2018, Guangdong IP Fair proposed that Guangdong will unswervingly implement the strictest intellectual property protection, provide a good business environment for the innovation and development of enterprises, and make intellectual property an important support for Guangdong’s development. On 22 November, 2018, the Beijing Action Plan for Further Optimization of Business Environment (2018 - 2020) mentioned that: 17. Implement the most stringent intellectual property protection. (1) Improve an authoritative and efficient intellectual property judicial protection system, strengthen the administrative supervision and enforcement of IP rights, increase the criminal case transfer from administrative law enforcement agencies to intellectual property courts, and significantly increase the cost paid for infringement of IP rights. In May 2018, the leaders of the Jiangsu Province inspected the Jiangsu High People’s Court, stating that Jiangsu should implement the most stringent intellectual property protection.

²⁶ Wu Handong (2018). Overview of China’s intellectual property law in transition. *Social Sciences in China*, 8.

²⁷ Wang Yong. How to cope with cyber infringement? We not only need to talk about this seriously, but to resort to authoritative means (29 January, 2019). The People’s Political Consultation News.