

## **On China's IPR Trade: Status Quo and Countermeasures<sup>1</sup>**

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### **Abstract**

*The rapid development of the intellectual property trade reflects the development trend of international trade, and intellectual property rights protection is also raised to the level of national strategy by countries. 'Technique patented, patent standardized, standard monopolized' has become a protection model of the intellectual property trade. On the basis of analysis of the current situation of the IPR trade in China; this paper puts forward the countermeasures from the government level, industry level and enterprise level.*

**Keywords:** intellectual property rights (IPR), trade, strategy

### **1. Introduction**

With the rapid development of science and technology, traditional international trade has changed from single tangible goods trade to multiplex goods trade, service trade and intellectual property rights (IPR) trade. After the goods trade and service trade, IPR trade has become a new mode of trade, and its growth of trade is far greater than that of world's total trade. Against this background, the contradictions and conflicts in the field of IPR trade are intensified. The international market and profit distribution pattern change gradually. Full understanding the influence of IPR on international trade and developing the corresponding intellectual property strategy are the important subjects for China to improve the international competitive ability of IPR trade.

### **2. China's IPR Trade Status Quo**

China has promoted the issue of IPR protection to the national strategy of the macro level. IPR protection is considered to be an important strategic measure by China to seize and maintain the international competitive ability in the field of science and economy. China has made certain progress in international IPR trade on some advantage products, nevertheless, China is still at an early stage by starting late in this field. The characteristics that the status quo of China's IPR trade shows are:

- imperfect protection system of IPR;
- Chinese national's weak awareness on intellectual property protection;
- incomplete system of trade;
- lack of independent innovation ability.

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China shows a tendency of IPR trade deficit increased year by year, which is not only a big barrier for the development of IPR trade in China, but also harm to the domestic and foreign trade environment.

### **2.1 Weak Awareness of IPR Protection**

Scientific research institutions, universities and enterprises in China do not pay much attention on intellectual protection, so that they have no necessary protection measures. Because of lacking awareness of IPR protection, technology innovation bodies neglect their intellectual rights and enterprise managers ignore the intellectual property as invisible assets. Furthermore, the same situation happens on the local government, industry associations and enterprises. Facing with an IPR dispute, they do not plead actively. As a result, this brings a high infringement fee and monopoly fee.

### **2.2 Lack of the Core Technology with Independent IPR and the International Brand**

The development of Chinese enterprises relies mainly on the cost advantage (cheap labor advantage) in recent years. Quite a number of core technologies in pillar industry rely on foreign countries, which leads a danger of industry technology hollowing-out. In terms of trade modes, processing trade accounts for 60% in China's foreign trade exports, and 90% high-tech product export is processing trade. In addition, Chinese enterprises are badly short on innovation ability, and lack independent IPR and core technology, that make Chinese enterprises into dispute.

### **2.3 imperfection of Chinese IPR legislation**

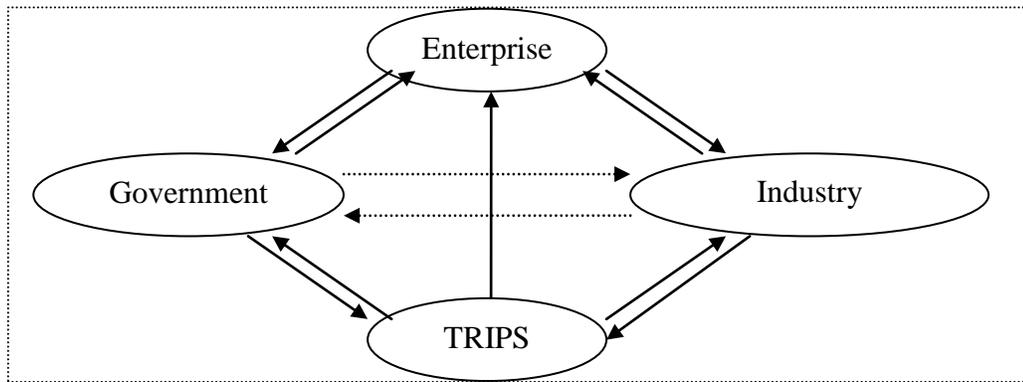
There is a wide range of legislations nowadays in China, however, these scattered and disorder legislations have not been formed the legal system for protecting IPR. The problem is not only the difference existed between laws and TRIPS in China, but also the undeveloped legal system. Overlapping adjustment, conflict rules and gap adjustment lead Chinese enterprises in passive state when facing the intellectual property dispute. So improving China's IPR legislation and constructing a legal system that conform to TRIPS, are the inevitable requirements to strengthen China's IPR trade.

### **2.4 Lack of Coordination and Warning Mechanism from Industries**

In China, many administrative departments are related to IPR in foreign trade, existing problems such as regional segmentation management system which is dominated by the government; no cohesion between policy and management; no efficiency communication and coordination mechanism. When trade dispute of IPR happens, a legal team will be set up by Chinese government in most cases. The legal team is responsible for evidence and investigations. Technology professional characteristics in different industry make getting evidence and investigations difficult. If there is no unified coordination and warning mechanism from industries, the development of IPR trade will meet big barrier in China.

## **3. China's IPR Trade Countermeasures**

The development of China's IPR trade is still at early stage, which should formulate development and implementation strategy in wide ways and many layers. First of all, Chinese government implement the development strategy of IPR trade according to the characteristics of various industries, and further refining the policies and regulations related to IPR trade. Secondly, government at all levels and industry associations, in terms of TRIPS, formulate the IPR trade plan which is suitable for some type of enterprise or industry development. Thirdly, in conjunction with the industry association, regional government at all levels encourages enterprises to formulate the IPR trade development strategy. These countermeasures form a strategy net for IPR trade (see chart 1).



**Chart 1: China's Strategic Countermeasure for IPR trade**

### 3.1 Countermeasures from Government

Government authorities may actively collect and grasp the new IPR trade tendency against China in international market and analyse the IPR barriers being implementing or having been proposed. After that, government could formulate a reporting and quick reaction mechanism of IPR barriers, in order to make adjustment when learning the changes of trade policies and countermeasures from other countries.

In addition, greater efforts must be made to establish and improve professional cooperative organizations and intermediary organizations, such as chamber of commerce and industry association. These organizations could play an important role in investigation, coordination, early warning and service. Building patent net in industries help enterprise to get the research and development information in the same industry domestic and abroad. Further more, by analyzing the patent net, government authorities could issue patent warnings to enterprises.

### 3.2 Countermeasures from Industry Association

The important role of industry association should play fully for IPR protection in organization, coordination and service. Industry association is the bridge between the government and enterprises, and also it can strengthen the strategic coordination and linkage mechanism between enterprises. Enterprises from different industries should form standard alliances, and establish industry standard together for dispersing the risk of standardization. Due to understanding the industry characteristics and enterprise's real situation, industry association should lead the joint pleading and improve the power of pleading when confronting with foreign intellectual property litigation.

### 3.3 Countermeasures from Enterprise

Chinese enterprises need to develop strategy for their IPR. Firstly, enterprises should know accurately the industry development direction by communicating with local government and industry association. Secondly, from the long-term benefits, enterprises should increase the R&D investment and focus on developing independent IPR. The independent technology innovation ability helps enterprises to obtain more and more IPR and to avoid even across the IPR barriers from other countries. Thirdly, independent IPR regulator set up by industry association could promote the ability to deal with intellectual property litigation. Last but not least, IPR barrier has restrictive and dynamic characteristics on time, technology and geography. Chinese enterprises should make the best of these characteristics to achieve the innovative design and combination, and improve the core technology to make new product more suitable for the market.

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