China Intellectual Property Law

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Lesson 1

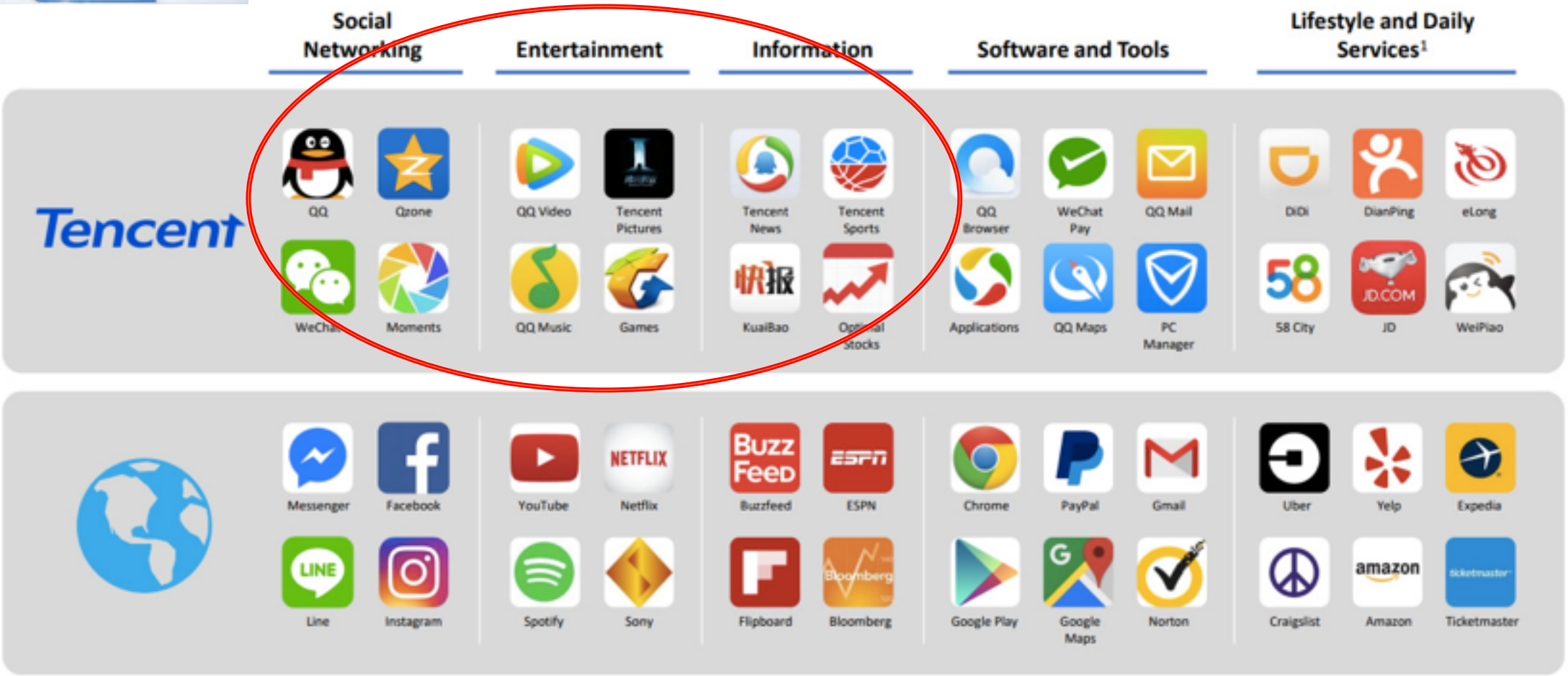
- Overview
- Four basic concepts: intellectual property; copyright; patent; trademark
- Policy goals: copyright law; patent law; trademark law
- China’s IP system

Overview

- Tencent is a world-leading internet and technology company.
- Founded in 1998 with its headquarters in Shenzhen, China.
- Tencent’s communication and social services connect more than one billion people around the world
- Tencent also publishes some of the world's most popular video games and other high-quality digital content, enriching interactive entertainment experiences for people around the globe.
- Tencent has been listed on the Stock Exchange of Hong Kong since 2004.

“Tech+Culture” firm

No matter how far artificial intelligence and technology goes, culture will never be replaced.”
-by Pony Ma in 2017

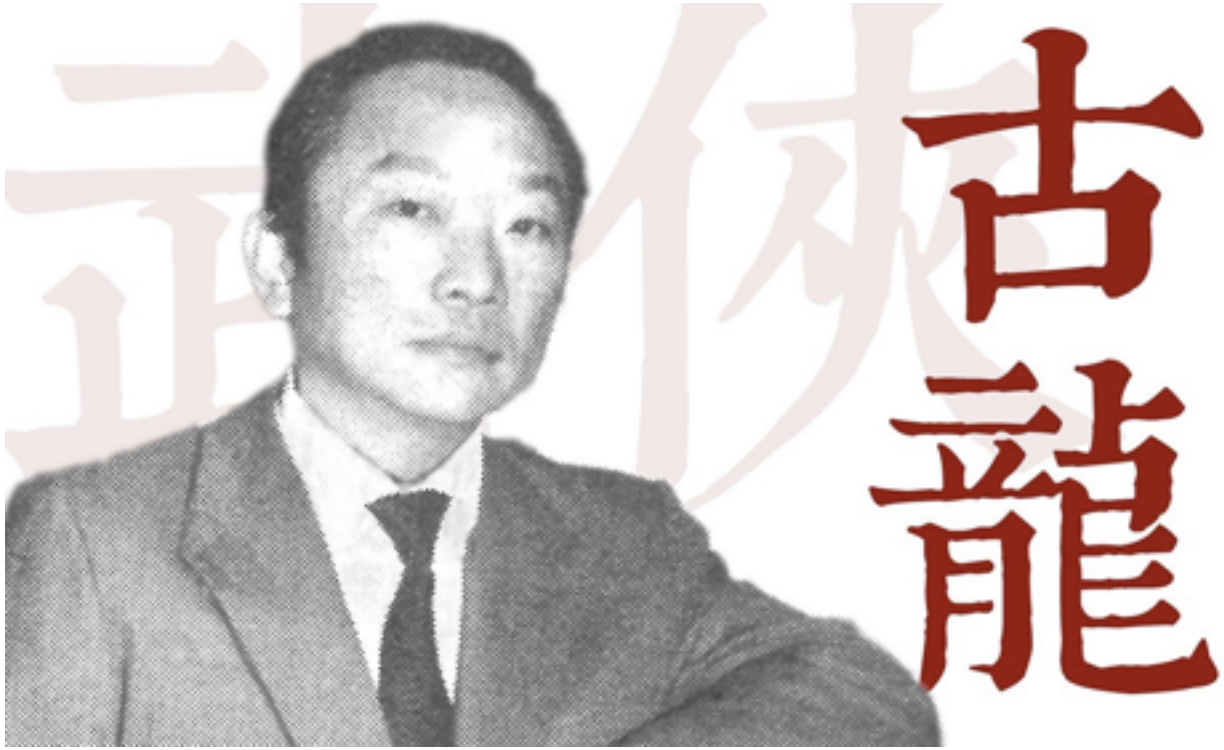


Overview

Since 2018

From Pan Entertainment strategy to Neo-Culture Creativity (NCC) strategy

With dominant market shares in online games and social networking, Tencent had recently built a vast Internet-based entertainment ecosystem, and was now focused on cultural asset development. Starting in 2018, such asset development was guided by the company’s Neo-Culture Creativity (NCC) strategy



Xiong Yaohua (7 June 1938 – 21 September 1985), better known by his pen name Gu Long, was a Hong Kong-born Taiwanese novelist, screenwriter, film producer and director.

IRON MAN
HULK
IRON MAN 2
THOR
CAPTAIN AMERICA
AVENGERS
IRON MAN 3
THOR
THE DARK WORLD
CAPTAIN AMERICA
THE WINTER SOLDIER
GUARDIANS OF THE GALAXY
AVENGERS
AGE OF ULTRON
ANT-MAN
CIVIL WAR
UNITED WE STAND. DIVIDED WE FALL.
DOCTOR STRANGE
GUARDIANS OF THE GALAXY VOL. 2
SPIDER-MAN
THOR
RAGNAROK

三少爺的劍
火併十一郎
刀神
天涯明月刀
古龍著
武林外史
絕代雙驕
第六部
楚留香

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天涯明月刀
武林外史
絕代雙驕
楚留香

Highest-Grossing IP Worldwide

IP	Commercial Value (USD)	Media Format at Launch	Company
Pokémon	95 billion	Game	Nintendo
Hello Kitty	80 billion	Cartoon Character	Sanrio
Winnie the Pooh	75 billion	Book	Disney
Mickey Mouse & His Friends	70 billion	Animation	Disney
Star Wars	65 billion	Movie	Lucas/Disney
Anpanman	60 billion	Comic	Froebel-kan
Disney Princesses	45 billion	Comics and Animations	Disney
Jump Comics	40 billion	Comic	Shueisha/Bandai Namco
Mario	36 billion	Game	Nintendo
Marvel Cinematic Universe	34 billion	Comic	Marvel/Disney
Harry Potter	31 billion	Book	J.K. Rowling/Warner Bros.
Spiderman	28 billion	Comic	Marvel/Sony
Gundam	26 billion	Animation	Bandai Namco
Batman	25 billion	Comic	DC
Dragon Ball	24.3 billion	Comic	Bandai Namco
Barbie	24 billion	Animated Movie	Mattel

Overview

“The reason for these great cultural symbols to survive different ages is that they can fulfill people’s shared emotional needs.”
- by Mark Ren (任宇昕)

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Tencent’s four-element model for evaluating IP

三少爺的劍
火併霸十一郎
刀神
天涯明月刀
武林外史
絕代雙驕
楚留香

CLONE WARS

SHONEN

Overview

Edward Cheng
(程武)

Decisions that Cheng and his team had to make included matching the IP with the right media format—whether it be a game, e-book, movie, drama series, or comics and animation.

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film

TV series

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Tencent Pictures

腾讯动漫
TENCENT ANIMATION & COMICS

film

TV series

anime

comics

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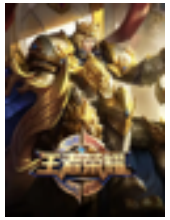

game

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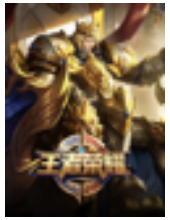

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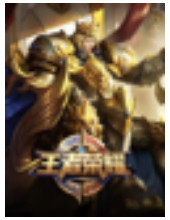

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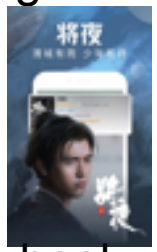

e-book

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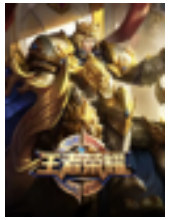

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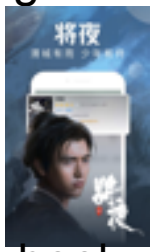

e-book

Tencent Video

streaming video series

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Content Ecosystem

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film

TV series

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anime

comics

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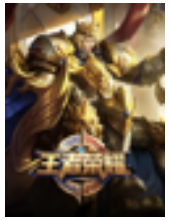
Tencent Games



game

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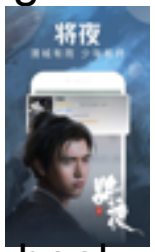
Tencent Literature



e-book

Tencent Video

streaming video series

Overview

Commercialization of cultural heritage

Flying Apsaras in the Dunhuang Grotto

Game skin in *Honor of Kings*. The skin was the result of a strategic partnership between Tencent and Dunhuang Research Academy

Literature

TV series

Conversion

Yunnan Peacon dance by Yang Liping Peacon dance in *QQ Dance*

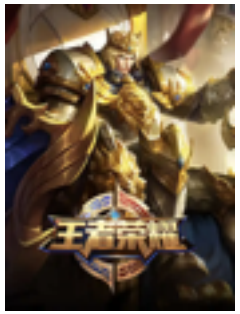
Overview

film

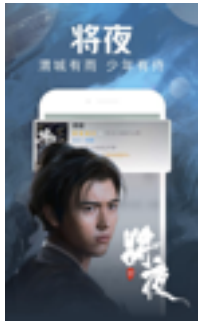
TV series

anime

comics

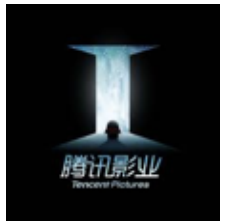


game



e-book

streaming video series



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Tencent Literature

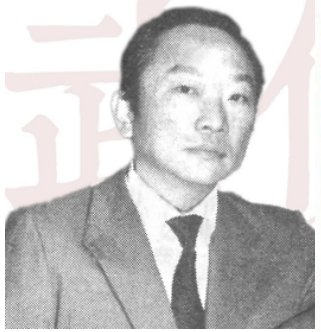
Tencent Video

Content Ecosystem

Copyright Law

Lesson 2 Copyrightable Subject Matter

Overview



Gu Long

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film

TV series

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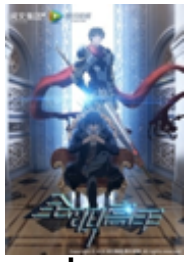

anime

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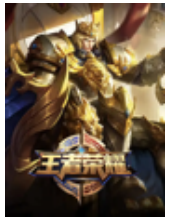
Tencent Games



game

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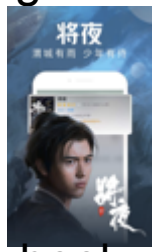
Tencent Literature



e-book

Tencent Video

streaming video series

Lesson 3 Elements of Copyright and Neighboring Rights

Overview

Lesson 4 Copyright Limitations and Remedies

Literature

TV series

When do we need author’s permission before we use the work?
What remedies could an author have for uses that are not permitted?

BLACK MYTH
WUKONG

GAME SCIENCE
首页
关于
产品
招聘
合作
游戏科学
GAME SCIENCE
世界品质，中国故事

序号	申请日期	商标	商标名称
1	2020-08-31	黑神话姜子牙	黑神话姜子牙
2	2020-08-31	黑神话姜子牙	黑神话姜子牙
3	2020-08-31	黑神话姜子牙	黑神话姜子牙
4	2020-08-31	黑神话姜子牙	黑神话姜子牙
5	2020-08-31	黑神话姜子牙	黑神话姜子牙

序号	申请日期	商标	商标名称
1	2020-08-31	黑神话钟馗	黑神话钟馗
2	2020-08-31	黑神话钟馗	黑神话钟馗
3	2020-08-31	黑神话钟馗	黑神话钟馗

威而鋼®(偉哥®)
VIAGRA®
盡享真・性・情
VGR-100
PM-VIA-22-120906

Patent
威而鋼(偉哥)
VIAGRA
盡享真・性・情
VGR-100
PM-VIA-22-120906

Trademark Patent
威而鋼(偉哥)
VIAGRA
盡享真・性・情
VGR-100

Copyright

- Pfizer is a research-based global drug company based in New York. It is one of the world's largest drug companies.
- Pfizer’s Viagra is the first erectile dysfunction drug in pill form.
- Erectile dysfunction was one type of male impotence, which was caused factors such as cardiovascular problems, enlarged prostate glands, taking certain medications, stress, depression, and aging. It was estimated that around half of men over 40 had at least mild or occasional erectile dysfunction.
- In China, around 74% of men aged 60—69 suffered from erectile dysfunction. In 2004, the potential market size of erectile dysfunction drugs was estimated to be between US$7.2 billion and US$12.0 billion.

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Age Range	Percentage of Men with Erectile Dysfunction
40 to 49	*32%*
50 to 59	*36%*
60 to 69	*74%*

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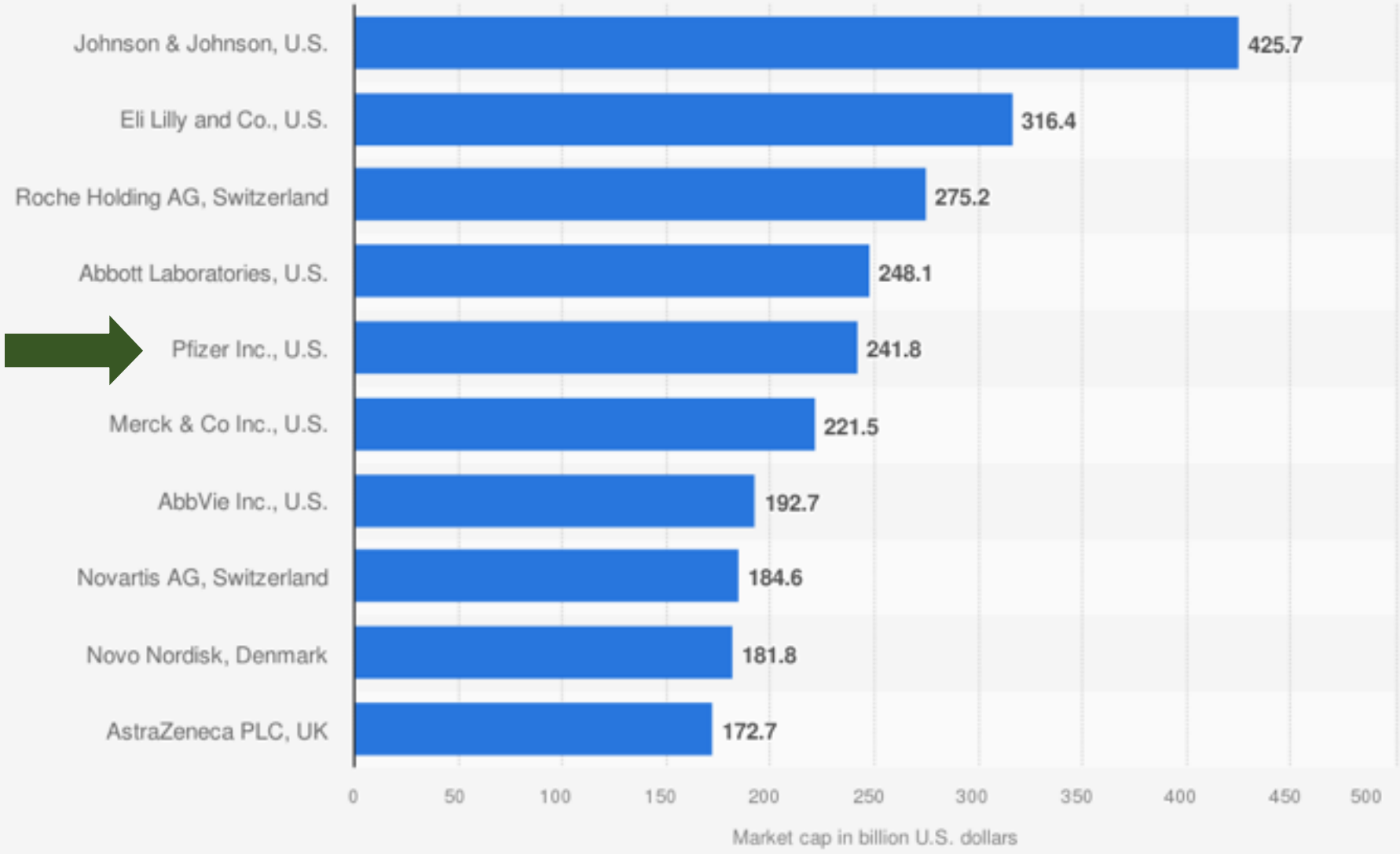
Johnson & Johnson
強生
Lilly
禮來
Roche
羅氏
Abbott
雅培
Pfizer
輝瑞



Sources
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Additional Information:
Worldwide; Financial Times; IHS Markit; as of October 2022

MERCK
默克
abbvie
艾伯維
NOVARTIS
諾華
novo nordisk
諾和諾德
AstraZeneca
阿斯特捷利康

Johnson & Johnson

強生

Lilly

禮來

Roche

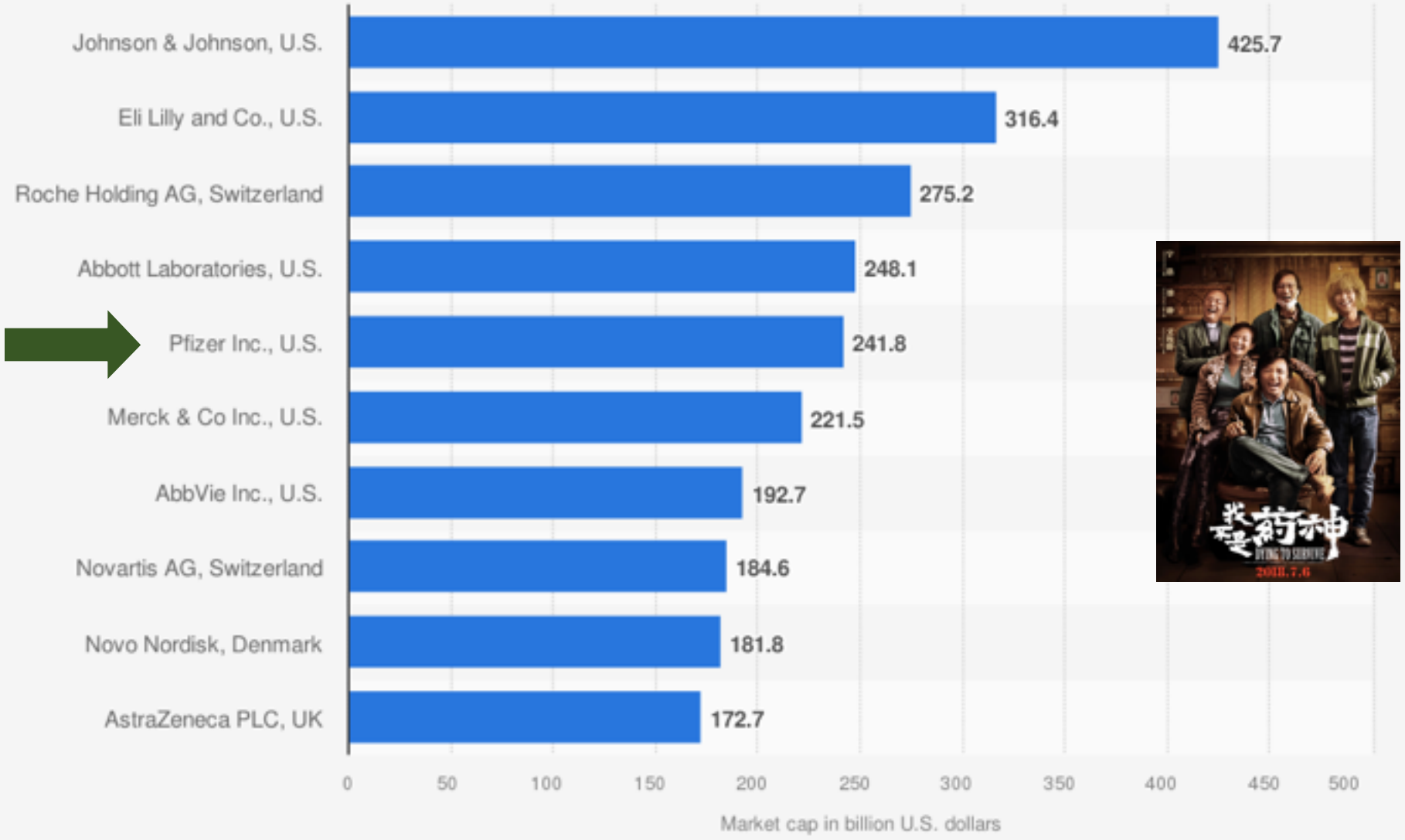
羅氏

Abbott

雅培

Pfizer

輝瑞



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MERCK

默克

abbvie

艾伯維

NOVARTIS

諾華

novo nordisk®

諾和諾德

AstraZeneca

阿斯特捷利康

Counterfeiters, who copied from both Pfizer and its competitors, had reaped most of the market share in China since 1998

Chinese media worldwide started calling Viagra by a Chinese nickname, “伟哥” *(“Weige”)*

Guangzhou Viamen Pharmaceutical Company, a local company in China, registered “伟哥”(“*Weige*”)as its trademark.

Genuine Viagra pills illegally imported from overseas and locally produced counterfeits soon began to flood the market.

This patent was jointly challenged by 12 local companies within a month.

The patent became invalidated in July 2004

Guangzhou Viamen had launched its independently developed erectile dysfunction drug using the “伟哥”(“*Weige*”)trademark and Viagra's three-dimensional trademark (“3D trademark”)

Pfizer lost in the “伟哥”(“*Weige*”) trademark litigation in July 2009

In April 1998, Pfizer Inc (“Pfizer”) launched Viagra, a prescription drug for treating erectile dysfunction, in the US and Europe with huge success

In July 2000, Pfizer was approved to sell Viagra in China

In September 2001, Pfizer was officially granted its patent for Viagra.

Pfizer appealed for its patent right, and sued Guangzhou Viamen for infringing Pfizer's unregistered well-known trademark, “伟哥” (“*Weige*”), and its 3D trademark for Viagra.

Patent lawsuit won Dec. 2006

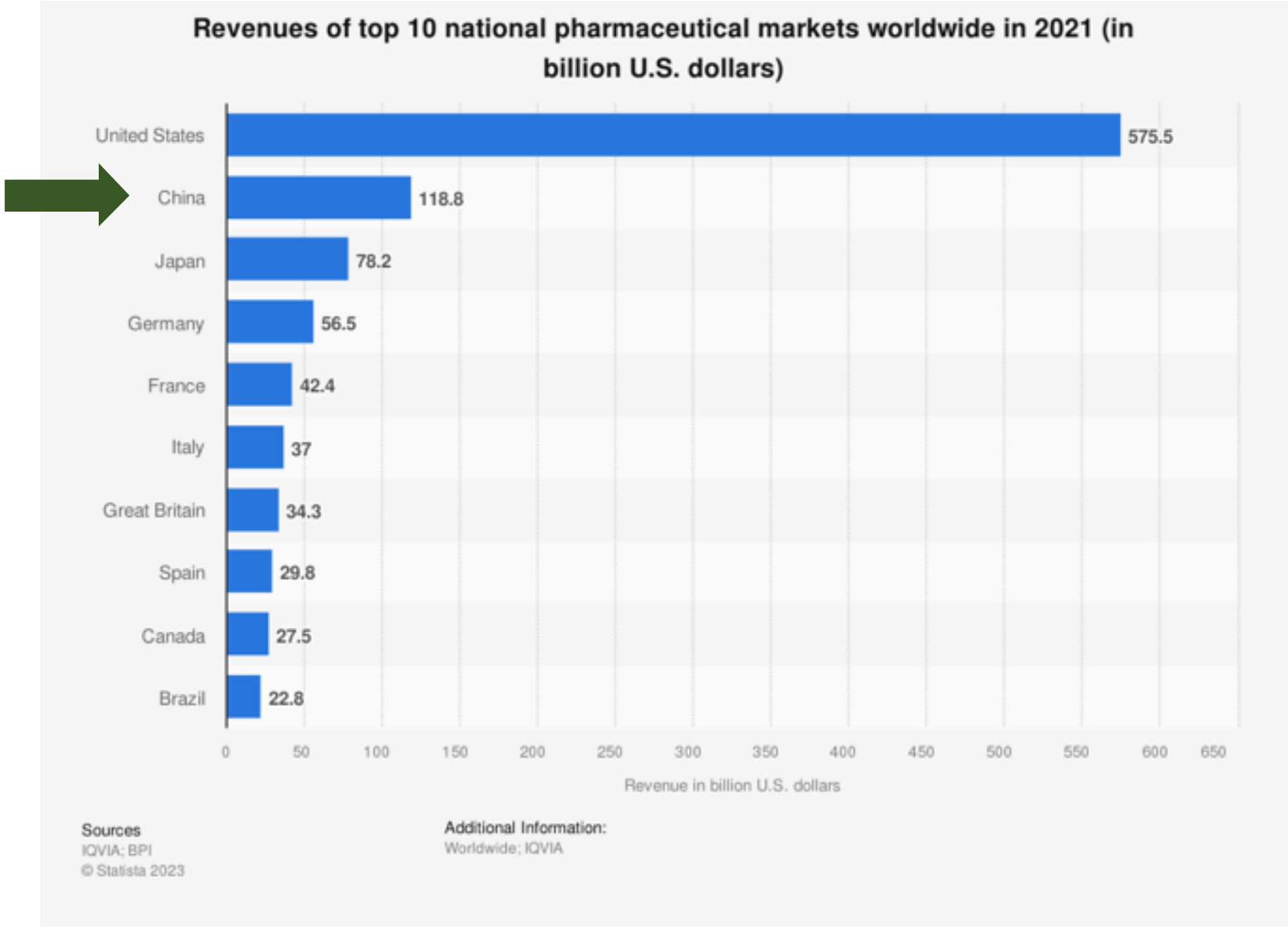
3D trademark lawsuit Won Sept 2007

In late 2009, Pfizer's management was trying to figure out what had gone wrong in its market entry strategy for Viagra, how to generate more sales before its patent in China expired in 2014, and what should be done to better protect the intellectual property rights (“IPR”) for the new drugs it would launch in the country.

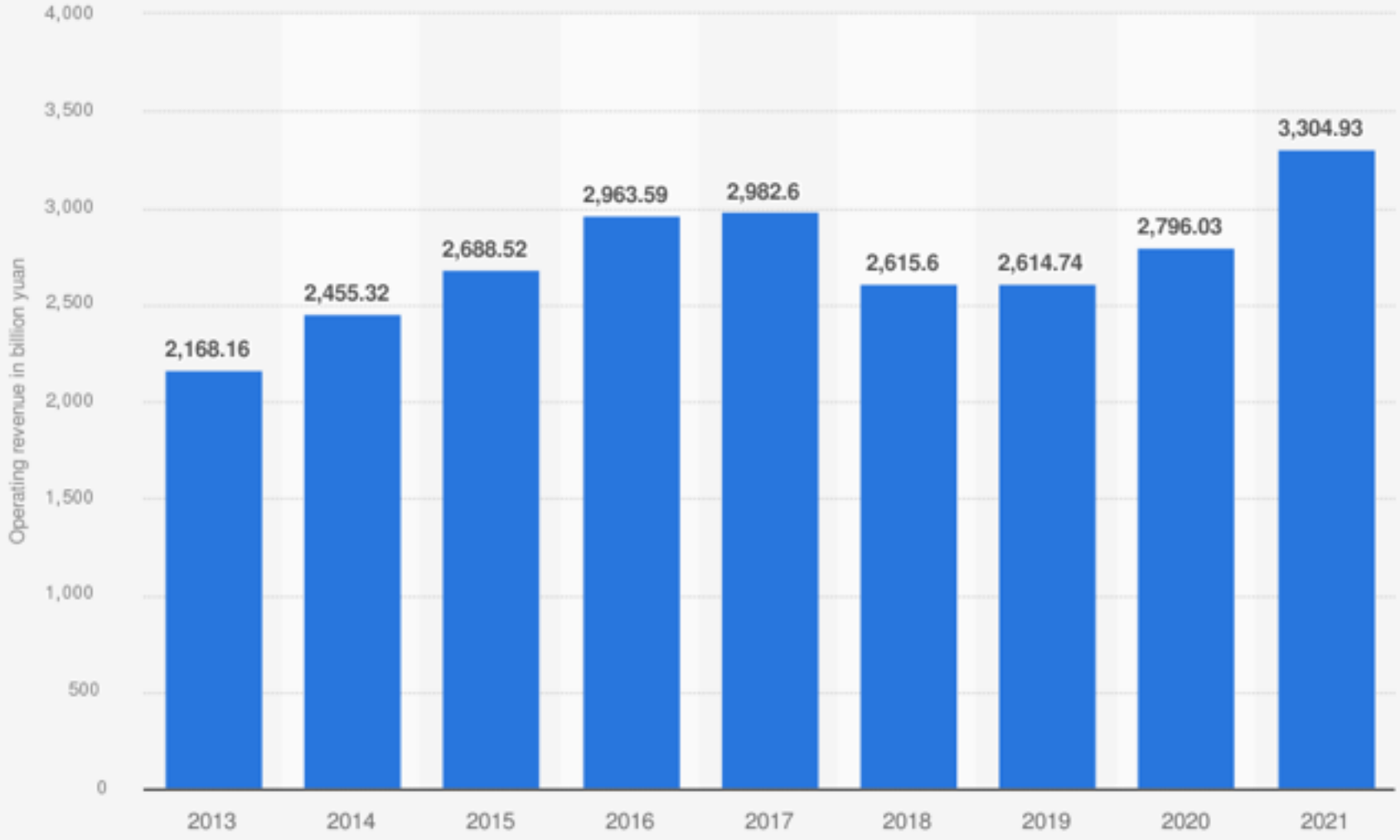
Fake Weige

- China had about 1.3 billion people in 2008, about 450 million of whom lived in cities and about 175 million of whom were in the middle class.
- At that time, China's drug market was the fifth largest in the world, bringing in a total of US$24.5 billion.
- Even though China has a huge market, there was no drug that made a billion dollars.
- About 20% of the drugs sold in the country came from global companies.
- It was estimated that about 97% of the drugs made by local companies were either generics or counterfeits.
- The proliferation of fake drugs posed serious threats to public health and had resulted in reputation damage to legitimate drug manufacturers. In 2001 alone, 192,000 patients were killed by fake drugs.
- In 2004, around 70—80% of erectile dysfunction drugs consumed in China were counterfeits

Weige 300 RMB a bottle


Revenues of top 10 national pharmaceutical markets worldwide in 2021 (in billion U.S. dollars)
United States
575.5
China
118.8
Japan
78.2
Germany
56.5
France
42.4
Italy
37
Great Britain
34.3
Spain
29.8
Canada
27.5
Brazil
22.8
0
50
100
150
200
250
300
350
400
450
500
550
600
650
Revenue in billion U.S. dollars
Sources
IQVIA; BPI
© Statista 2023
Additional Information:
Worldwide; IQVIA

Total operating revenue of the pharmaceutical industry in China from 2013 to 2021 (in billion yuan)

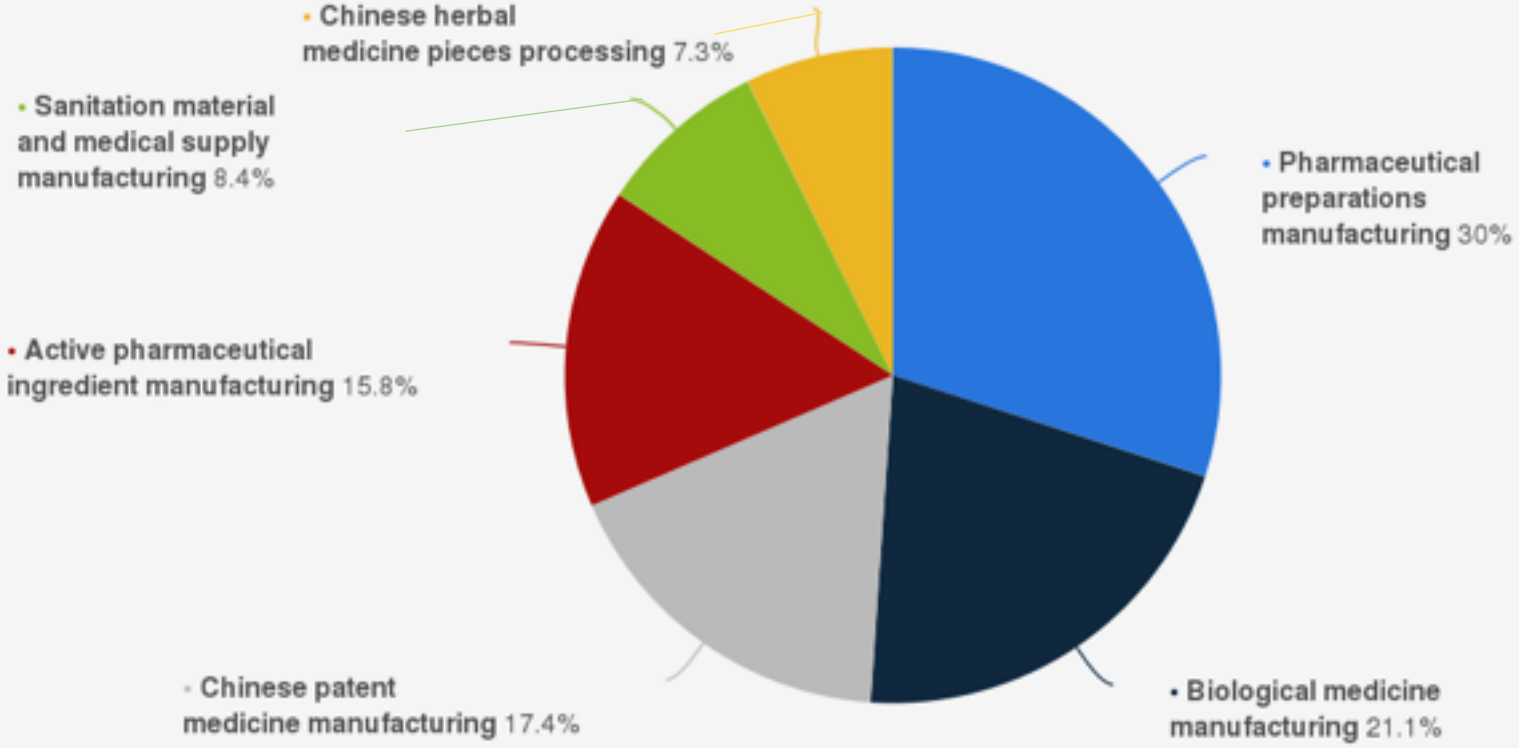


Sources
National Bureau of Statistics of China; China Pharmaceutical Enterprises Association

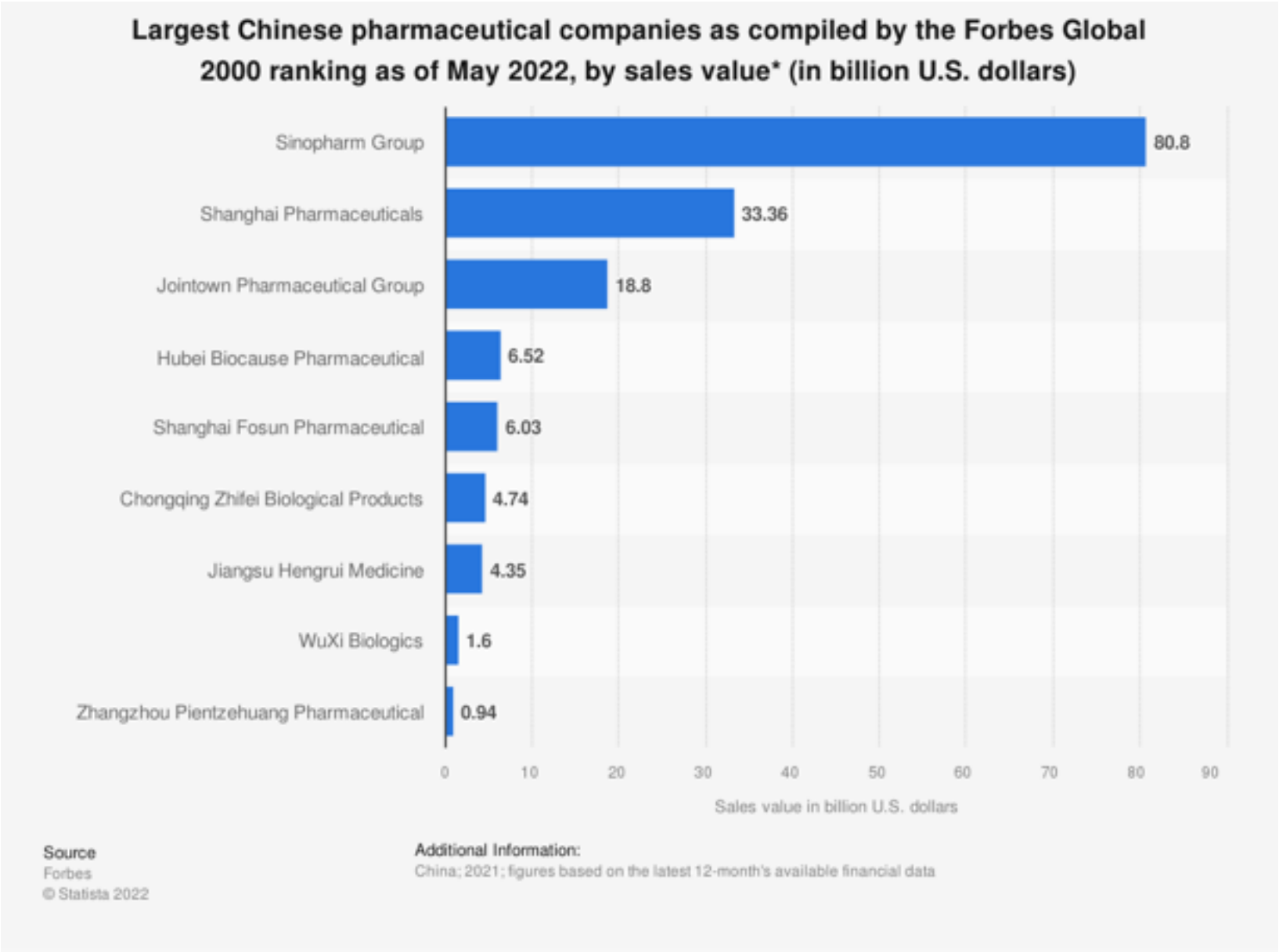
© Statista 2022

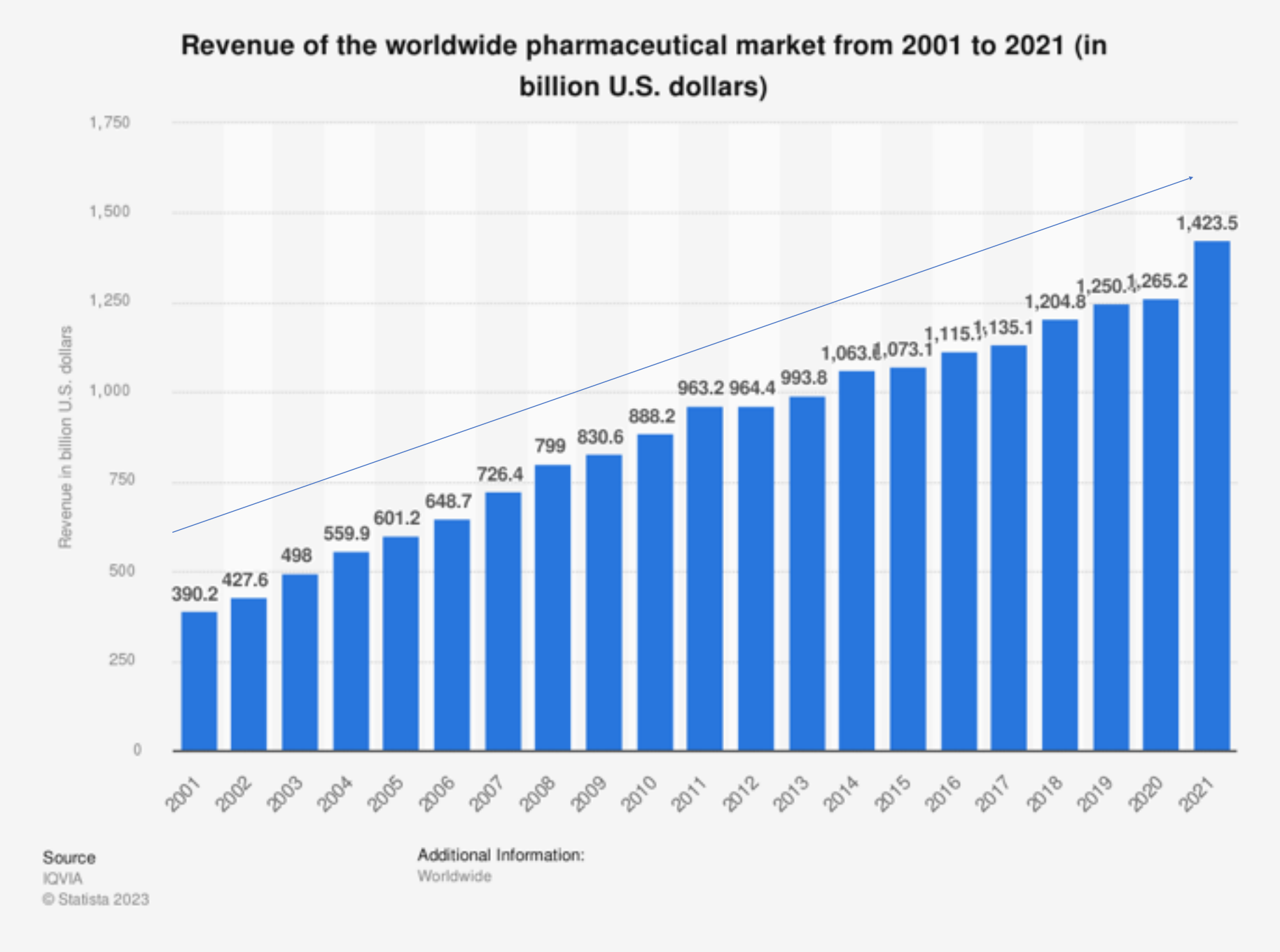
Additional Information:
China; National Bureau of Statistics of China; 2013 to 2021

Distribution of revenue in the pharmaceutical industry in China in 2021, by segment



Additional Information:
China; chyxx.com; Sinohealth; 2021


Largest Chinese pharmaceutical companies as compiled by the Forbes Global 2000 ranking as of May 2022, by sales value* (in billion U.S. dollars)
Sinopharm Group
80.8
Shanghai Pharmaceuticals
33.36
Jointown Pharmaceutical Group
18.8
Hubei Biocause Pharmaceutical
6.52
Shanghai Fosun Pharmaceutical
6.03
Chongqing Zhifei Biological Products
4.74
Jiangsu Hengrui Medicine
4.35
WuXi Biologics
1.6
Zhangzhou Pientzehuang Pharmaceutical
0.94
0
10
20
30
40
50
60
70
80
90
Sales value in billion U.S. dollars
Source
Forbes
© Statista 2022
Additional Information:
China; 2021; figures based on the latest 12-month's available financial data


Revenue of the worldwide pharmaceutical market from 2001 to 2021 (in billion U.S. dollars)
Revenue in billion U.S. dollars
1,750
1,500
1,250
1,000
750
500
250
0
390.2
427.6
498
559.9
601.2
648.7
726.4
799
830.6
888.2
963.2
964.4
993.8
1,063.6
1,073.1
1,115.1
1,135.1
1,204.8
1,250.1
1,265.2
1,423.5
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
Source
IQVIA
© Statista 2023
Additional Information:
Worldwide

Overview

- Pharmaceutical industry
  - Research and development (“R&D”) investment for drugs was costly with high risk of failure, and it often took many years before a new drug could be launched.

10%

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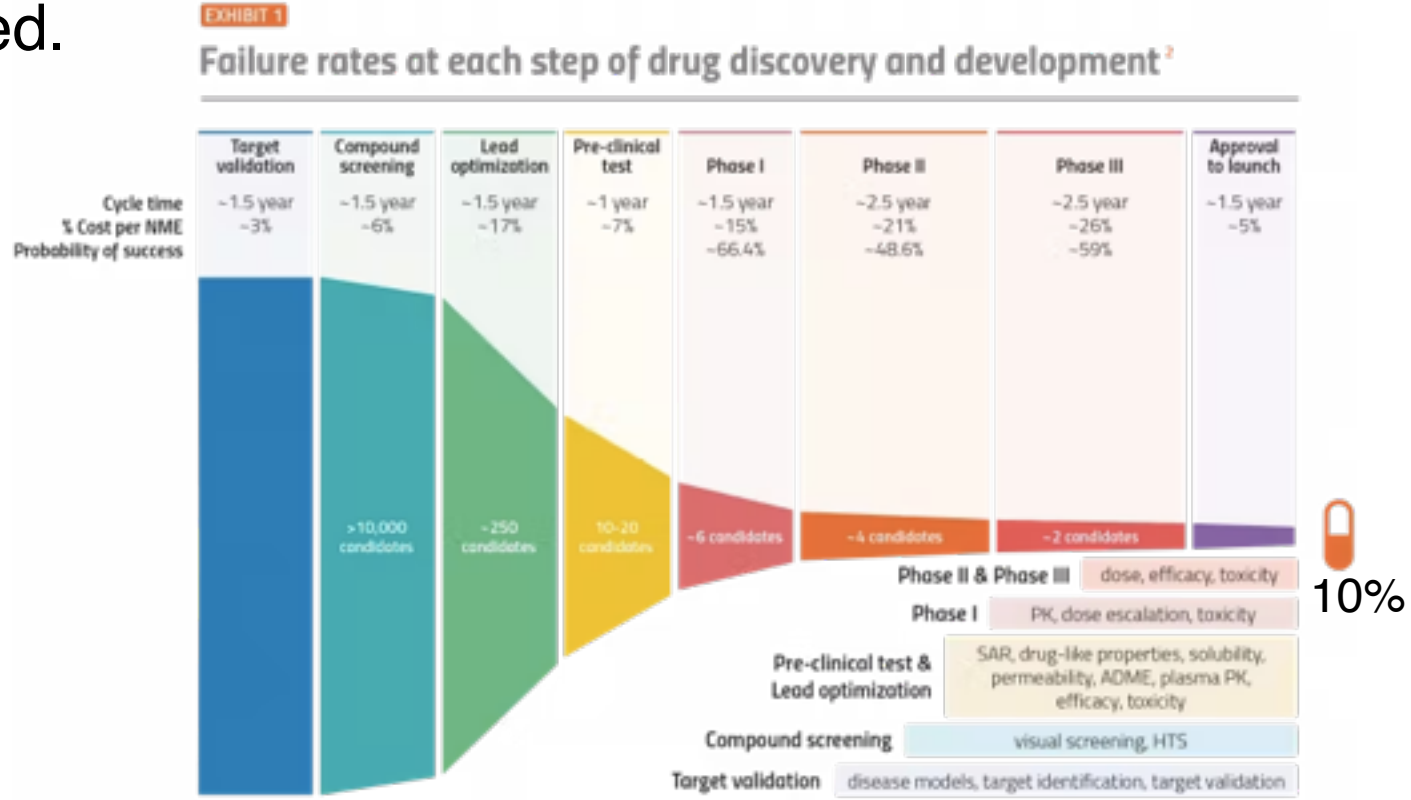

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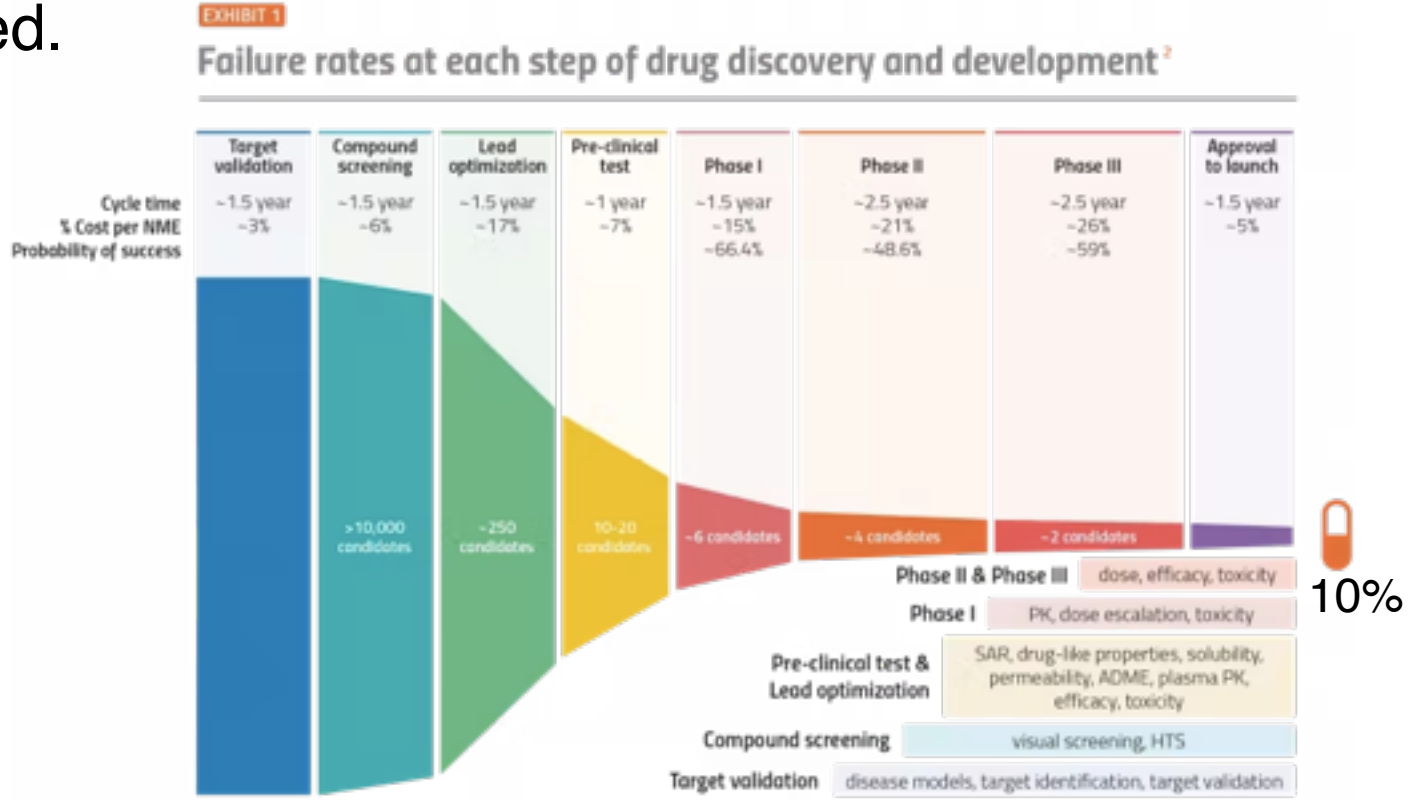
  - Research and development (“R&D”) investment for drugs was costly with high risk of failure, and it often took many years before a new drug could be launched.

The time from when a company first patents an innovation to new medicine launch represents a useful proxy for measuring R&D efficiency. The median time from first patent filing to launch for U.S. novel active substances was 10.7 years in 2020 and 11.9 years in 2021, thus the time remaining to commercialize innovation until patent expiration decreased significantly.



Overview

The average cost per drug developed and approved by a single-drug company was $350 million. But for companies that approved between eight and 13 drugs over 10 years, the cost per drug went as high as $5.5 billion.

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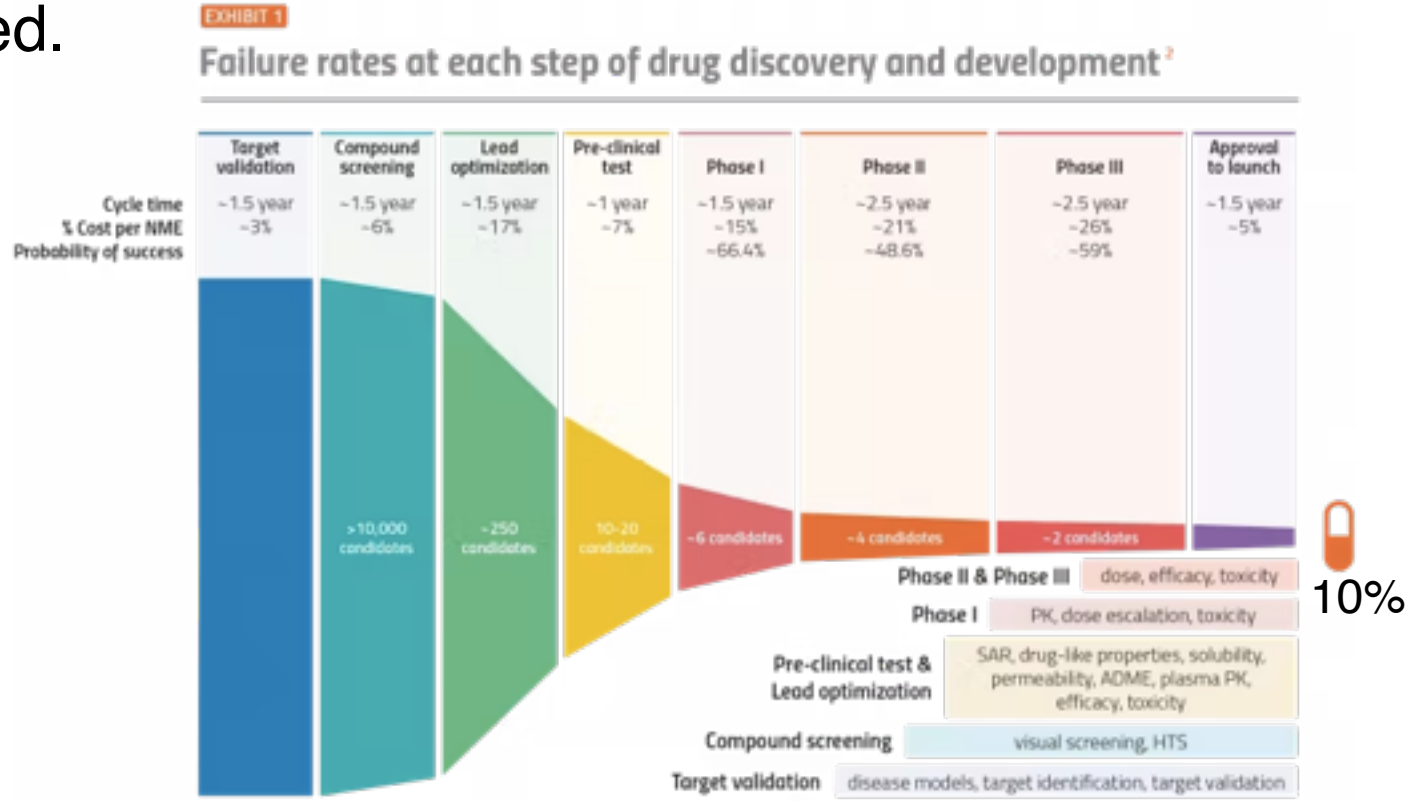

Companies	R&D Spend	R&D as a percentage of revenue
1. Pfizer	$13,829,000,000	17.0%
2. Roche Pharmaceuticals (division of Roche Group)	$13,342,082,240	27.1%
3. Merck & Co.	$12,245,000,000	25.1%
4. Janssen (Johnson & Johnson's pharmaceutical segment)	$11,882,000,000	22.8%
5. Bristol Myers Squibb	$11,354,000,000	24.5%
6. AstraZeneca	$9,736,000,000	26.0%
7. Novartis	$9,540,000,000	18.5%
8. AbbVie	$7,084,000,000	12.6%
9. Eli Lilly	$7,025,900,000	24.8%
10. Sanofi	$6,716,560,000	15.1%

Top R&D spenders in pharma in 2021

Overview

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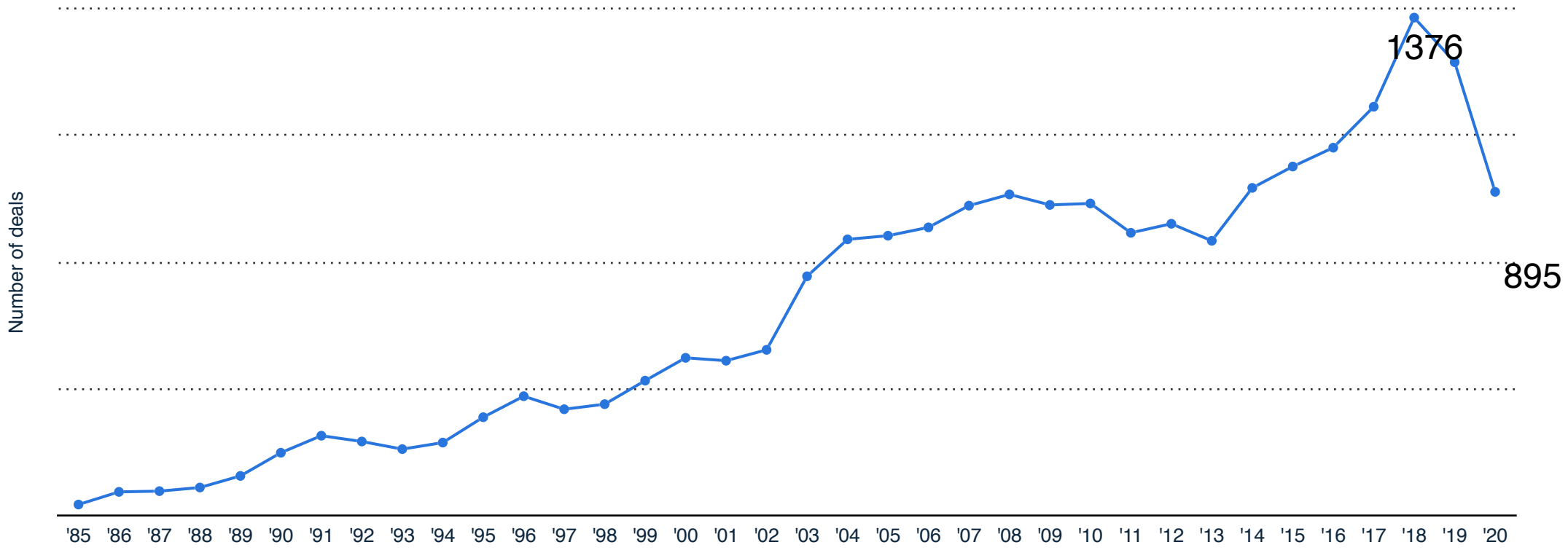
https://www-statista-com.heyworld.top/statistics/965888/number-biotechnology-pharmaceutical-manda-deals/

Number of merger and acquisition deals in biotechnology and pharmaceuticals sector worldwide from 1985 to 2020

Number of M&A transactions in biotechnology and pharmaceuticals sector 1985-2020



Note(s): Worldwide; 1985 to 2020

Further information regarding this statistic can be found on page 8.

Source(s): Institute for Mergers, Acquisitions and Alliances (IMAA); ID 965888

statista

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      - Patent: Global drug companies usually applied for multiple patents for a major drug, such as patents for its chemical ingredients, composition, production process and applications. After a drug's patent expired, cheaper generic versions launched by other companies would lead to a rapid drop in its revenue.

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Overview

Effect of Patent Expiration on the Global Revenues of Two Select Pfizer Drugs

Year Ended 31 December	Revenue from Neurotonin (for epilepsy)		Revenue from Zoloft (for depression)	
	US$ million	% Change	US$ million	% Change
1998	-	-	1,836	21.83
1999	913	-	1,997	8.77
2000	1,334	46.11	2,140	7.16
2001	1,751	31.26	2,366	10.56
2002	2,269	29.58	2,742	15.89
2003	2,702	19.08	3,118	13.71
2004	2,723	0.78	3,361	7.79
2005	639	(76.53)	3,256	(3.12)
2006	496	(22.38)	2,110	(35.20)
2007	431	(13.10)	531	(74.83)
2008	387	(10.21)	539	1.51

Note: The patent of Neurotonin in the US expired in 2005 and the patent of Zoloft in the US expired in 2006. Source: Pfizer Inc (2004-2008) “Annual Report”； Pfizer Inc (2000, 2002) “Form 10-K”.

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Lesson 6 Patent Application and Elements of Patent Right

Lesson 7 Patent Remedies and Implementation

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Pills of Viagra with its color and shape registered for a 3D trademark

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Lesson 8 Trademark Subject Matter

Lesson 9 Acquiring and Losing Trademark Protection

Lesson 10 Trademark Infringement and Well-Known Mark Protection

Overview

Lesson 11 Intellectual Property Strategies

IP Owners	IP Users
1. Exercise Market Power	1. Assert a Legal Privilege
2. Sell	2. Develop an Alternative
3. License	3. Get Permission
4. Collaborate	4. Detente
5. Donate	5. Rapid Dissemination

Gu Long

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not successful

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Gu Long

android

TESLA

HUAWEI

CATL

Overview

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fake alternative

not successful

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android

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HUAWEI

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Overview

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fake alternative

not successful

misleading trademark

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android

TESLA

HUAWEI

CATL

Basic Concepts

- Intellectual Property
- Copyright
- Patent
- Trademark

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  Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish. (World Intellectual Property Organization)

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Basic Concepts

- Intellectual Property
- **intellectual property** (1808) **1.** A category of intangible rights protecting commercially valuable products of the human intellect. • The category comprises primarily trademark, copyright, and patent rights, but also includes trade-secret rights, publicity rights, moral rights, and rights against unfair competition.
- **2.** A commercially valuable product of the human intellect, in a concrete or abstract form, such as a copyrightable work, a protectable trademark, a patentable invention, or a trade secret. — Abbr. IP.“While there is a close relationship between intangible property and the tangible objects in which they are embodied, intellectual property rights are distinct and separate from property rights in tangible goods. For example, when a person posts a letter to someone, the personal property in the ink and parchment is transferred to the recipient … [T]he sender (as author) retains intellectual property rights in the letter.” Lionel Bently & Brad Sherman, *Intellectual Property Law* 1–2 (2001).

Black's Law Dictionary (11th ed. 2019)

Basic Concepts

- Copyright
- **1.** The right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work.
- **2.** The body of law relating to such works.

Black's Law Dictionary (11th ed. 2019)

Basic Concepts

- Patent
- **1.** The governmental grant of a right, privilege, or authority.
- **2.** The official document so granting.
- **3.** The right to exclude others from making, using, marketing, selling, offering for sale, or importing an invention for a specified period (20 years from the date of filing), granted by the federal government to the inventor if the device or process is novel, useful, and nonobvious.

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Black's Law Dictionary (11th ed. 2019)

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- Trademark
- **Trademark** *n.* (1838) A word, phrase, logo, or other sensory **symbol** used by a manufacturer or seller to distinguish its products or services from those of others. The main purpose of a trademark is to designate the source of goods or services. In effect, the trademark is the commercial substitute for one's signature.
- **Infringement** *n.* (1572) *Intellectual property.* An act that interferes with one of the exclusive rights of a patent, copyright, or trademark owner.
- **Trademark infringement.** (1893) The unauthorized use of a trademark — or of a confusingly similar name, word, symbol, or any combination of these — in connection with the same or related goods or services and in a manner that is likely to cause confusion, deception, or mistake about the source of the goods or services.

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Basic Concepts

- Trademark
- **Trademark** *n.* (1838) [1$_{\text{equivelance}}$] A word, phrase, logo, or other sensory **symbol** used by a manufacturer or seller to distinguish its products or services from those of others. [2$_{\text{purpose}}$] The main purpose of a trademark is to designate the source of goods or services. [3$_{\text{function}}$] In effect, the trademark is the commercial substitute for one's signature.
- **Infringement** *n.* (1572) *Intellectual property.* An act that interferes with one of the [4.1$_{\text{mechanism of (trademark right)}}$] exclusive rights of a . . . trademark owner.
- **Trademark infringement** (1893) [4.2$_{\text{mechanism of (trademark right)}}$] The unauthorized use of a trademark — or of a confusingly similar name, word, symbol, or any combination of these — in connection with the same or related goods or services and in a manner that is likely to cause confusion, deception, or mistake about the source of the goods or services.

Black's Law Dictionary (11th ed. 2019)

Takeaways

- “Intellectual Property” might refer to “creations of the mind” or products of human intellect that are the subject matter of exclusive rights. “Creations of the mind” include works of authorship, inventions, and trademark.

- Or it might refer to the rights that can be used to exclude others from using these “creations of the mind.” These exclusive rights include copyright, patent, and trademark right.

Policy Concerns of Intellectual property

- What would be the benefits and costs of creating a set of exclusive rights on the “creation of minds”(works of authorship, invention, and trademarks)?

Policy Goals and Concerns of Copyright

exclusive rights on works of authorship

Policy Goals and Concerns of Copyright

exclusive rights on works of authorship

to incentivize

Policy Goals and Concerns of Copyright

exclusive rights on works of authorship

to incentivize

authors

Policy Goals and Concerns of Copyright

exclusive rights on works of authorship

to incentivize

to create

authors

Policy Goals and Concerns of Copyright

exclusive rights on works of authorship

Increase in number

public

to incentivize

to create

authors

Policy Goals and Concerns of Copyright

to reward

exclusive rights on works of authorship

Increase in number

public

to incentivize

to create

authors

Policy Goals and Concerns of Copyright

the author's labor

to reward

of creating

exclusive rights on works of authorship

Increase in number

public

to incentivize

to create

authors

Policy Goals and Concerns of Copyright

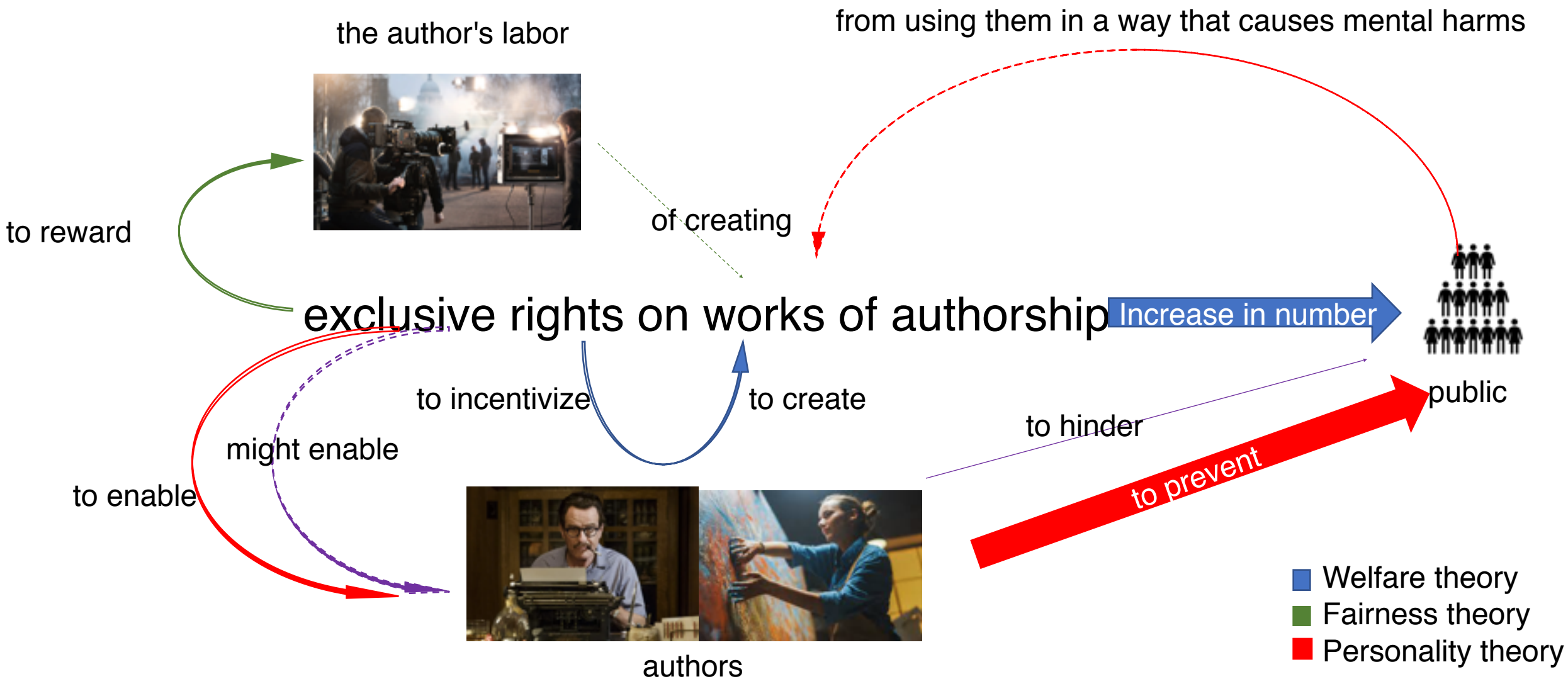
Policy Goals and Concerns of Copyright

Policy Goals and Concerns of Copyright

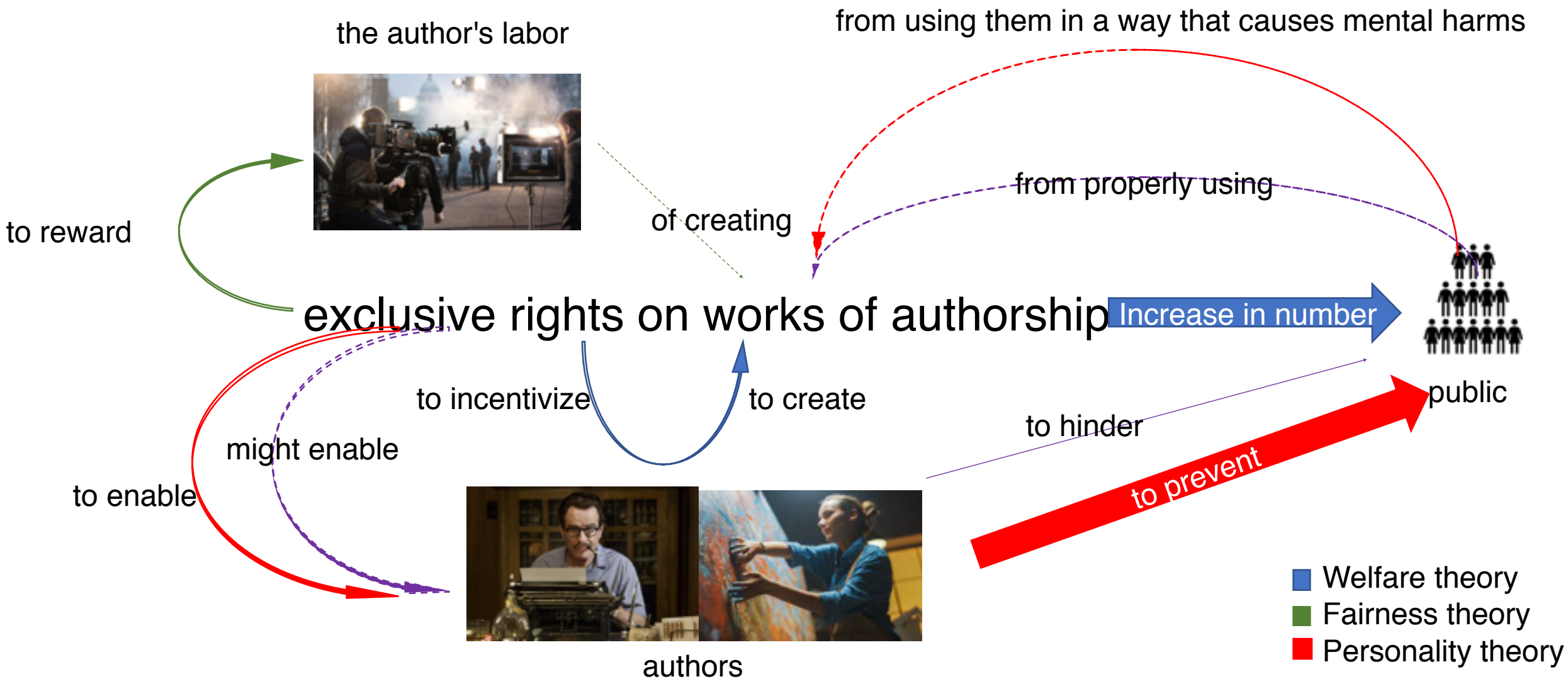
Policy Goals and Concerns of Copyright

Policy Goals and Concerns of Copyright

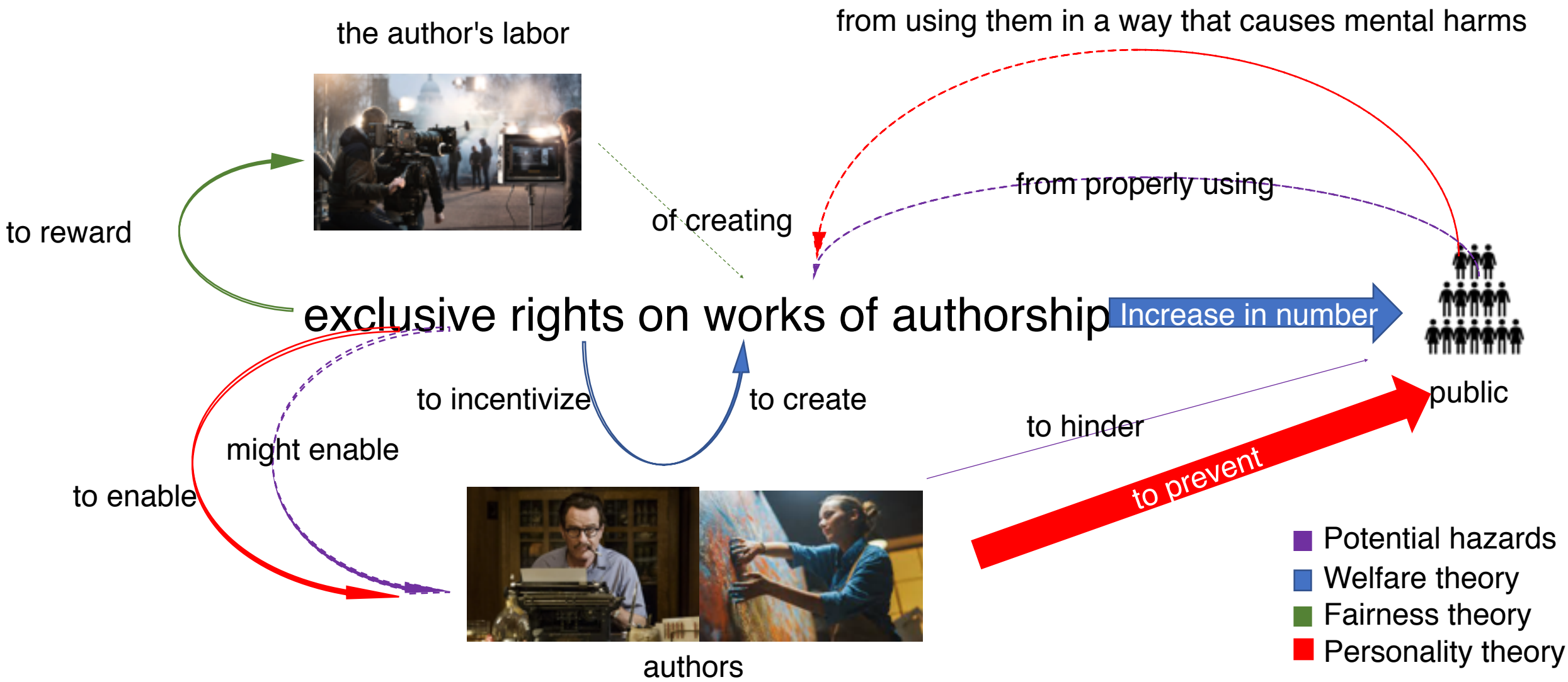
Policy Goals and Concerns of Copyright



Policy Goals and Concerns of Copyright



Policy Goals and Concerns of Copyright



Policy Goals and Concerns of Patent

exclusive rights on inventions

Policy Goals and Concerns of Patent

exclusive rights on inventions

to incentivize

to create

inventors

Policy Goals and Concerns of Patent

exclusive rights on inventions

Increase in number

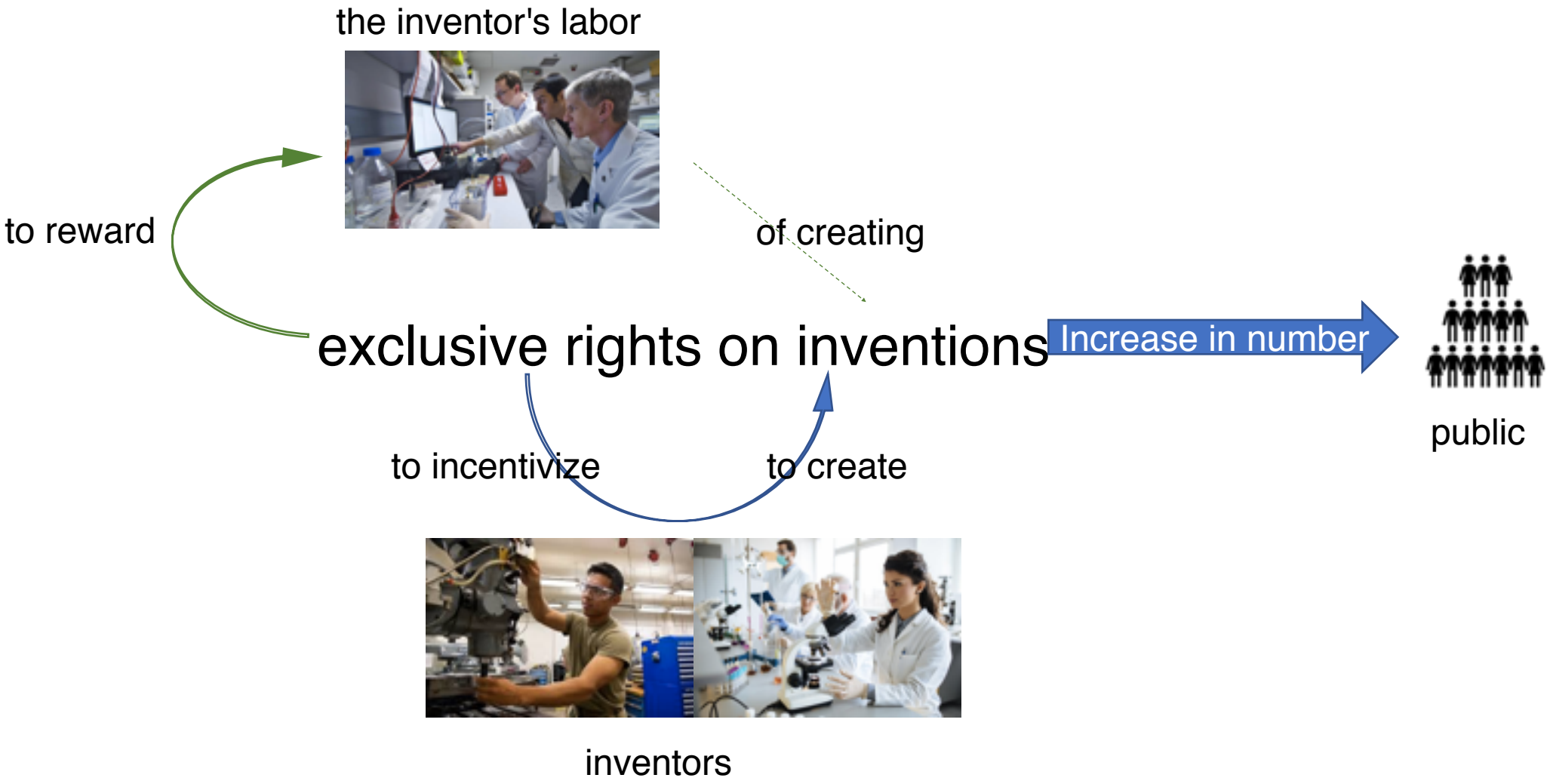
public

to incentivize

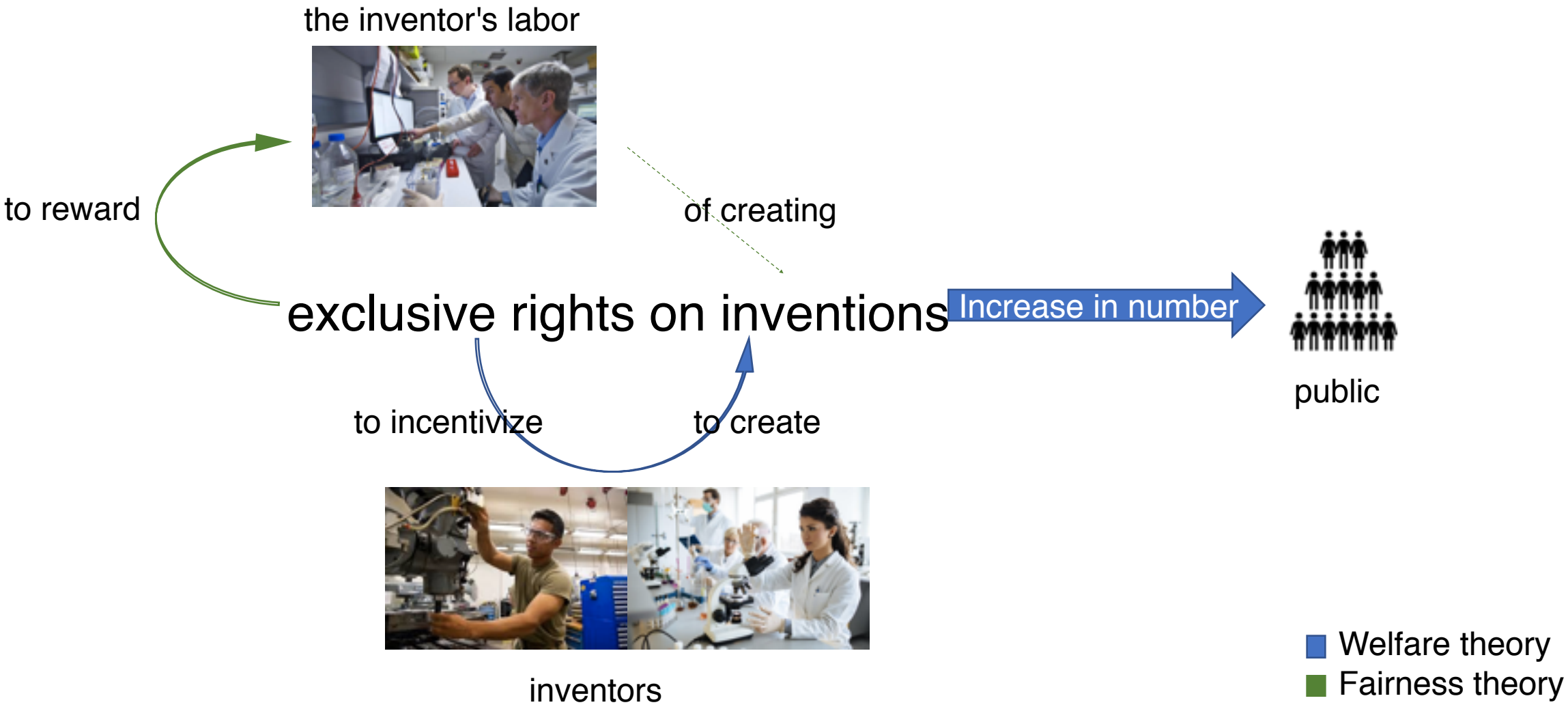
to create

inventors

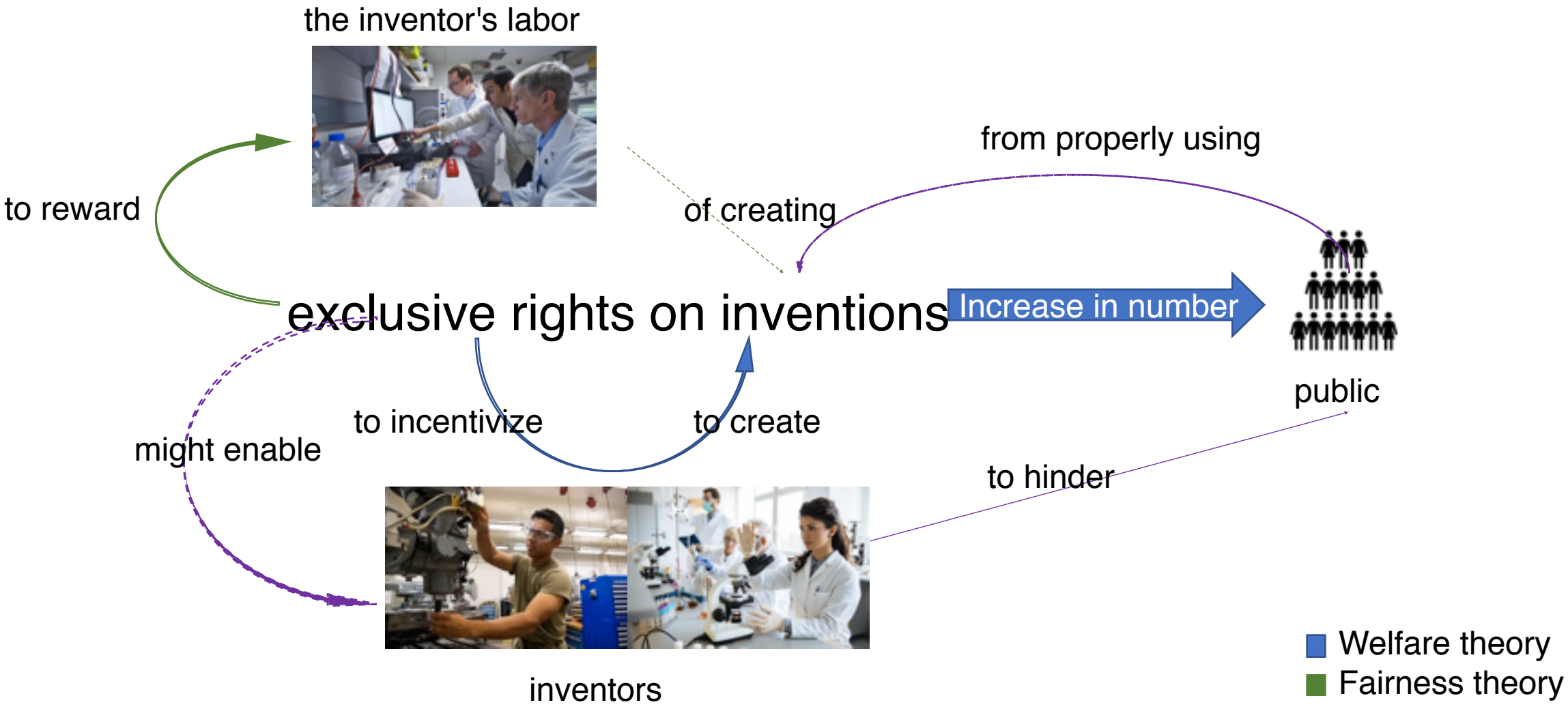
Policy Goals and Concerns of Patent



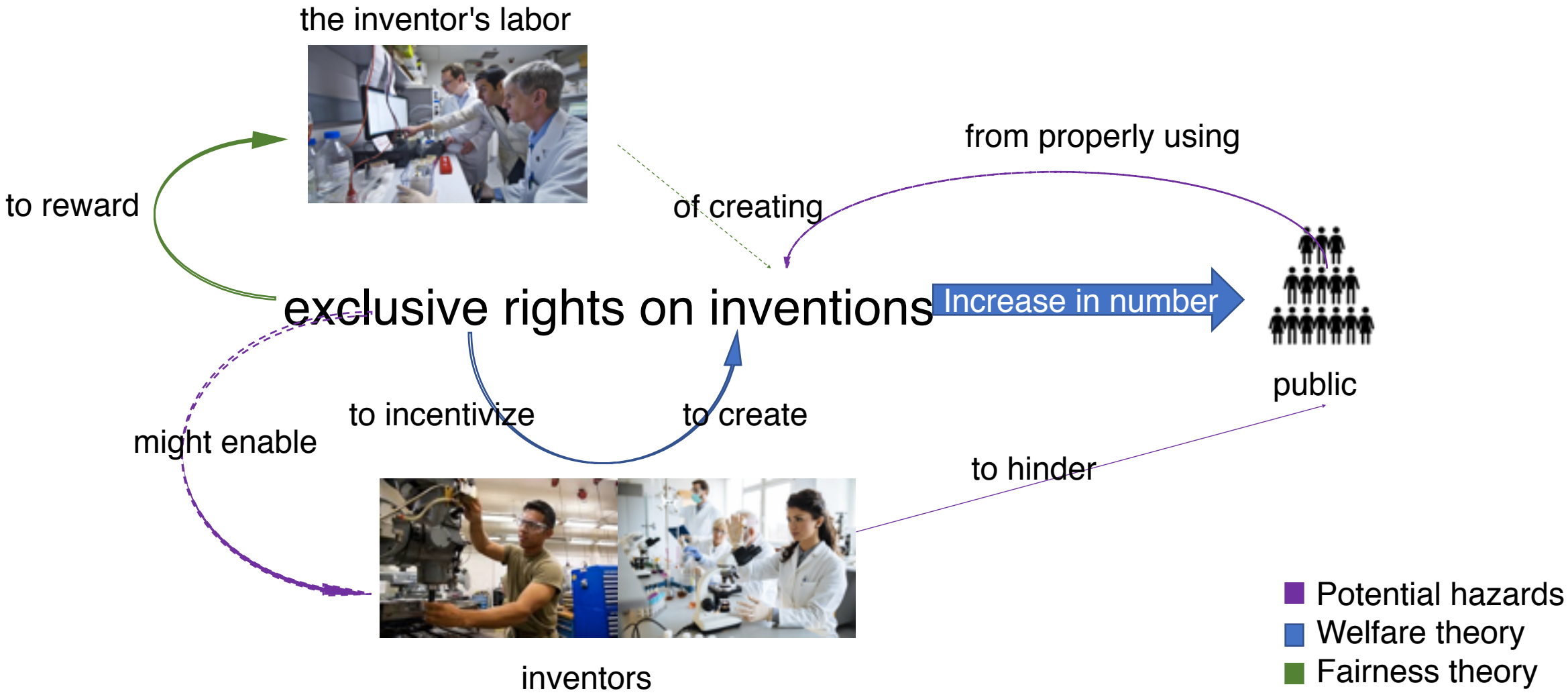
Policy Goals and Concerns of Patent



Policy Goals and Concerns of Patent



Policy Goals and Concerns of Patent



Policy Goals and Concerns of Trademark

exclusive rights on marks

Policy Goals and Concerns of Trademark

exclusive rights on marks

to enable

Policy Goals and Concerns of Trademark

to enable

exclusive rights on marks

product or service providers

Policy Goals and Concerns of Trademark

to prevent

to enable

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product or service providers

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Policy Goals and Concerns of Trademark

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consumers

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Policy Goals and Concerns of Trademark

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consumers

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can spend less time and efforts to search

targeted products or services

Policy Goals and Concerns of Trademark

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exclusive rights on marks

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Policy Goals and Concerns of Trademark

- Consumer search cost reduction
- Encouraging investment on quality
- Potential hazards

to prevent

from using similar marks to confuse

other product or service providers

to hinder

incentivize

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Policy Goals and Concerns of Trademark

Consumer search cost reduction
Encouraging investment on quality
Potential hazards

Welfare theory

to prevent

from using similar marks to confuse

other product or service providers

to hinder

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incentivize

consumers

exclusive rights on marks

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Summary

- “Intellectual Property” might refer to “creations of the mind” (e.g., inventions; literary and artistic works; designs; and symbols, names and images used in commerce) or the property rights to exclude others from using these intangible things. These property rights include copyright, patent, and trademark right.

Policy Concerns

- Benefits: Copyright and patent have reward function and incentive function. Copyright might be used to protect authors’ personhood interests. Trademark can reduce consumer search costs and incentivize businesses to improve or maintain the quality of their products or services.
- Hazards: When copyright and patent are overly broad or their protection is too strong, their owners might use them to hinder the public from using works or inventions in proper ways. As a result, works or inventions might be underused. In the case of copyright, the freedom of expression might be constrained. When trademark rights are overly broad or their protection is too strong, owners might use them to suppress competition and/or limit the freedom of expression of the public.

China’s IP System

Constitution of the People's Republic of China

- 1. The role of the communist party of China
- 2. The legislative power

China’s IP System

- The role of the communist party of China

The Party-State System (黨國體制)

Article 1 The People‘s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants.

第一条 中华人民共和国是工人阶级领导的、以工农联盟为基础的人民民主专政的社会主义国家。

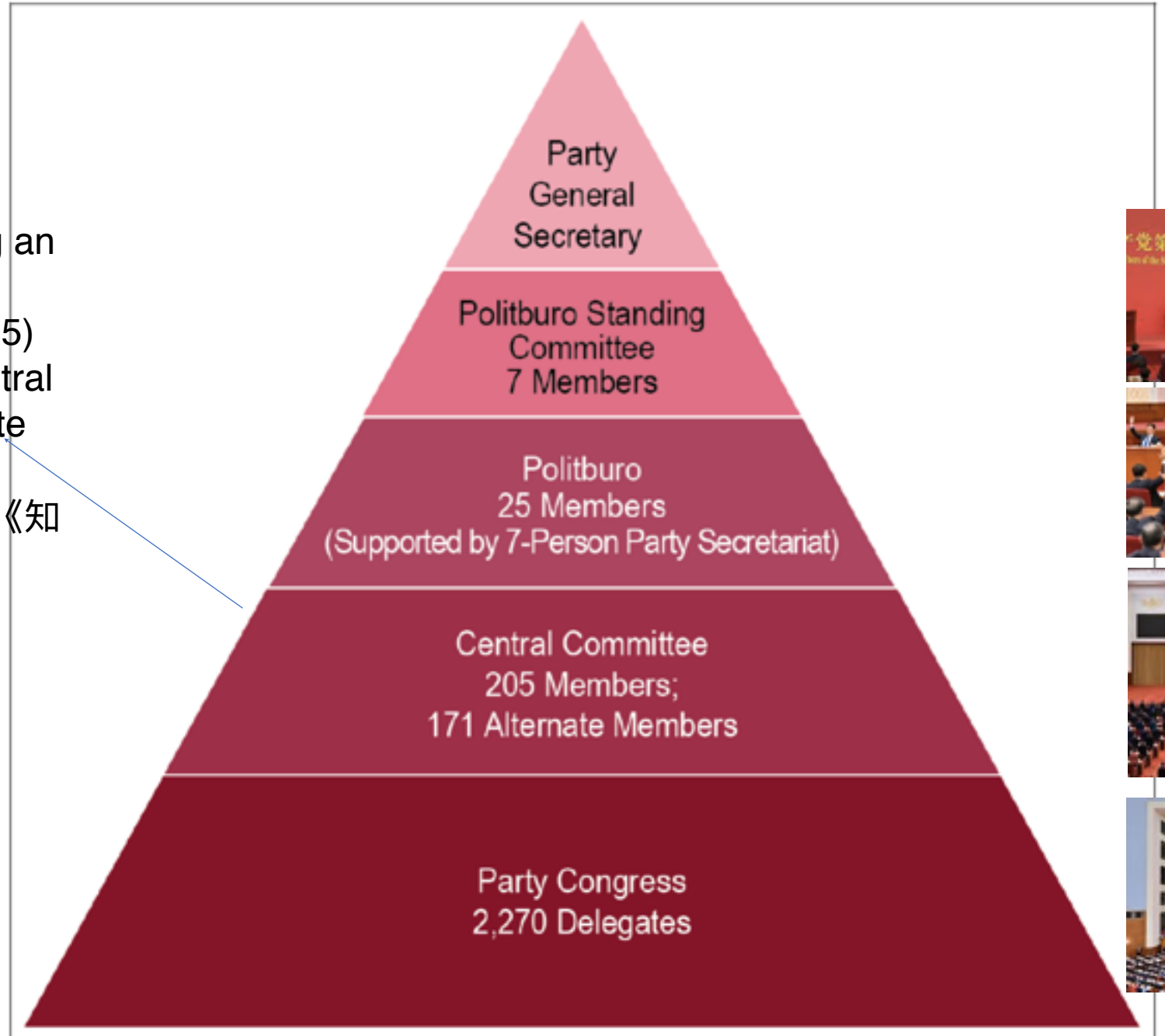
The socialist system is the basic system of the People's Republic of China. **The leadership of the Communist Party of China is the defining feature of socialism with Chinese characteristics.** Disruption of the socialist system by any organization or individual is prohibited.

社会主义制度是中华人民共和国的根本制度。中国共产党领导是中国特色社会主义最本质的特征。禁止任何组织或者个人破坏社会主义制度。

He, X., 2012. The party's leadership as a living constitution in China. *Hong Kong LJ*, *42*, p.73.

The Outline for Building an Intellectual Property Powerhouse (2021-2035) issued by the CPC Central Committee and the State Council
中共中央、国务院印发《知识产权强国建设纲要(2021－2035年)》

The Hierarchy of the Communist Party of China



China’s IP System

- The legislative power

Article 2 All power in the People's Republic of China belongs to the people.

第二条　中华人民共和国的一切权力属于人民。

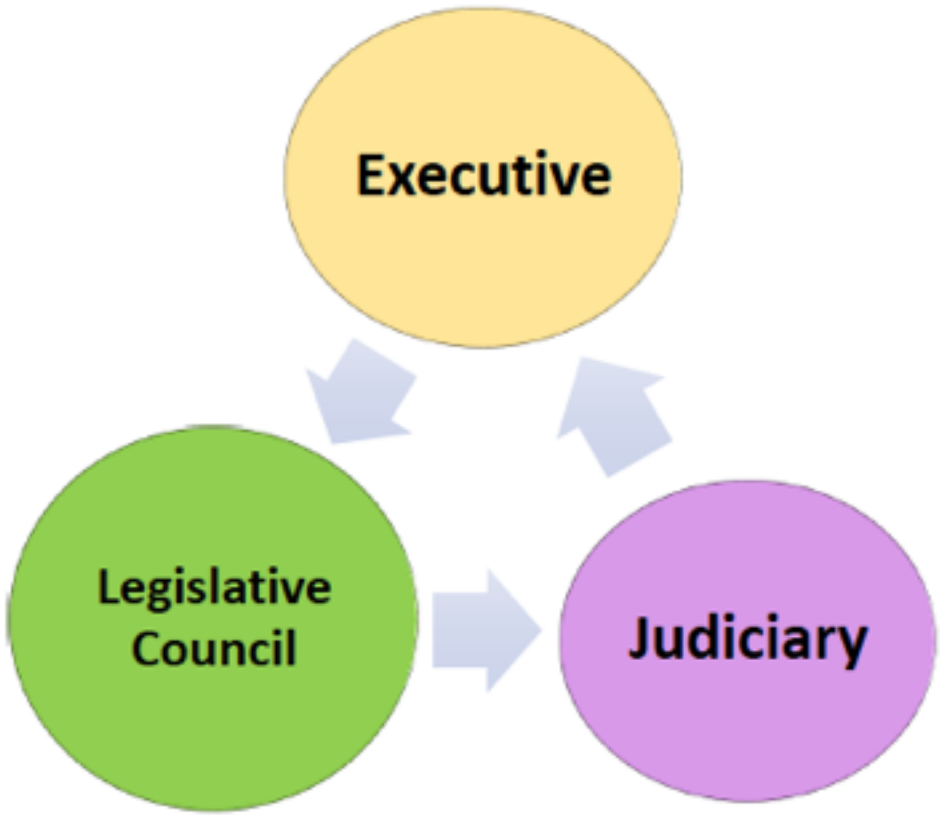
The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.

人民行使国家权力的机关是全国人民代表大会和地方各级人民代表大会。

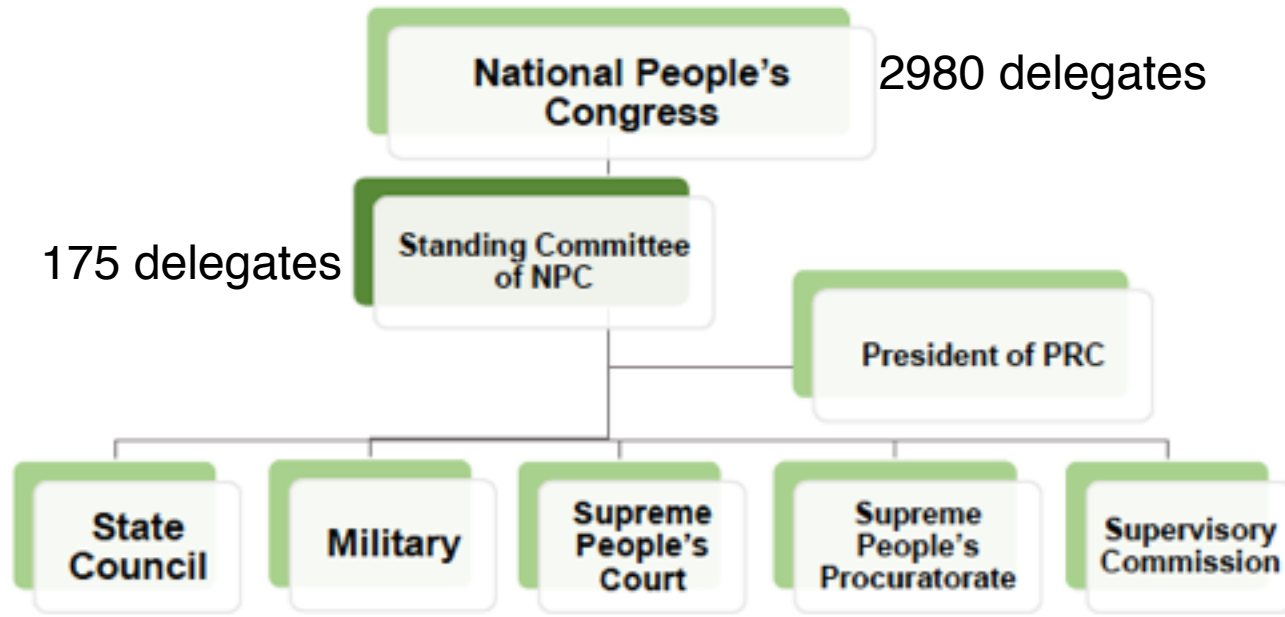
…

One country, two systems

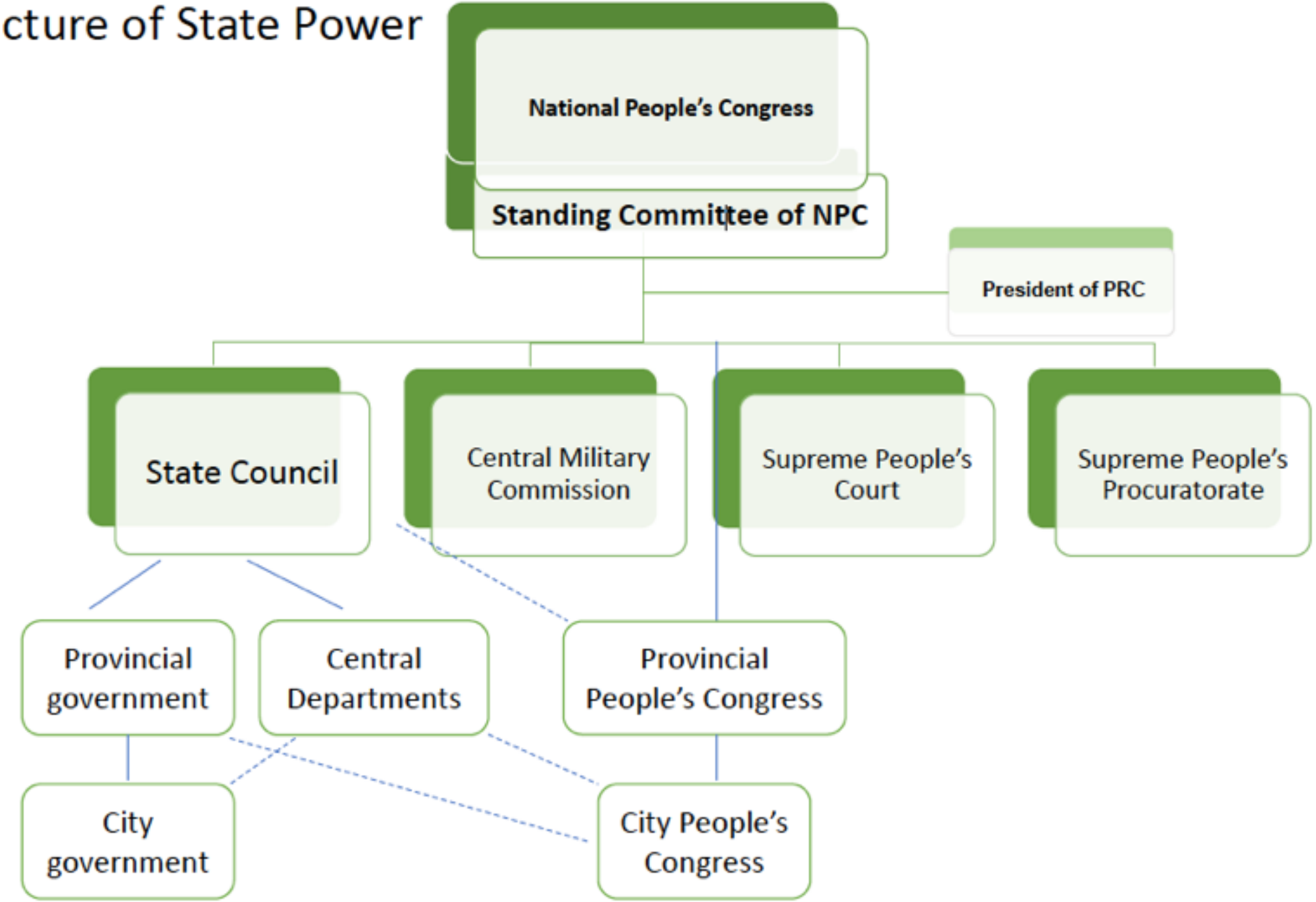
Hong Kong



Mainland



Structure of State Power



Administrative Division

Five levels of government

1. National 中央
2. Provincial / Autonomous Region / Municipalities 省、自治区、直辖市
3. City/ Autonomous prefecture 市、 自治州
4. County/District, Autonomous county 县/区、自治县
5. Township / Town/ Ethnic minority township 乡、镇、民族乡

(Village – self-governed, leadership of CPC Art 4 of Village Organic law)

Provincial level:

23 Provinces

5 Autonomous Regions

4 Municipalities directly under State Council

[2 Special Administrative Regions]

Sources of Law in the PRC

National

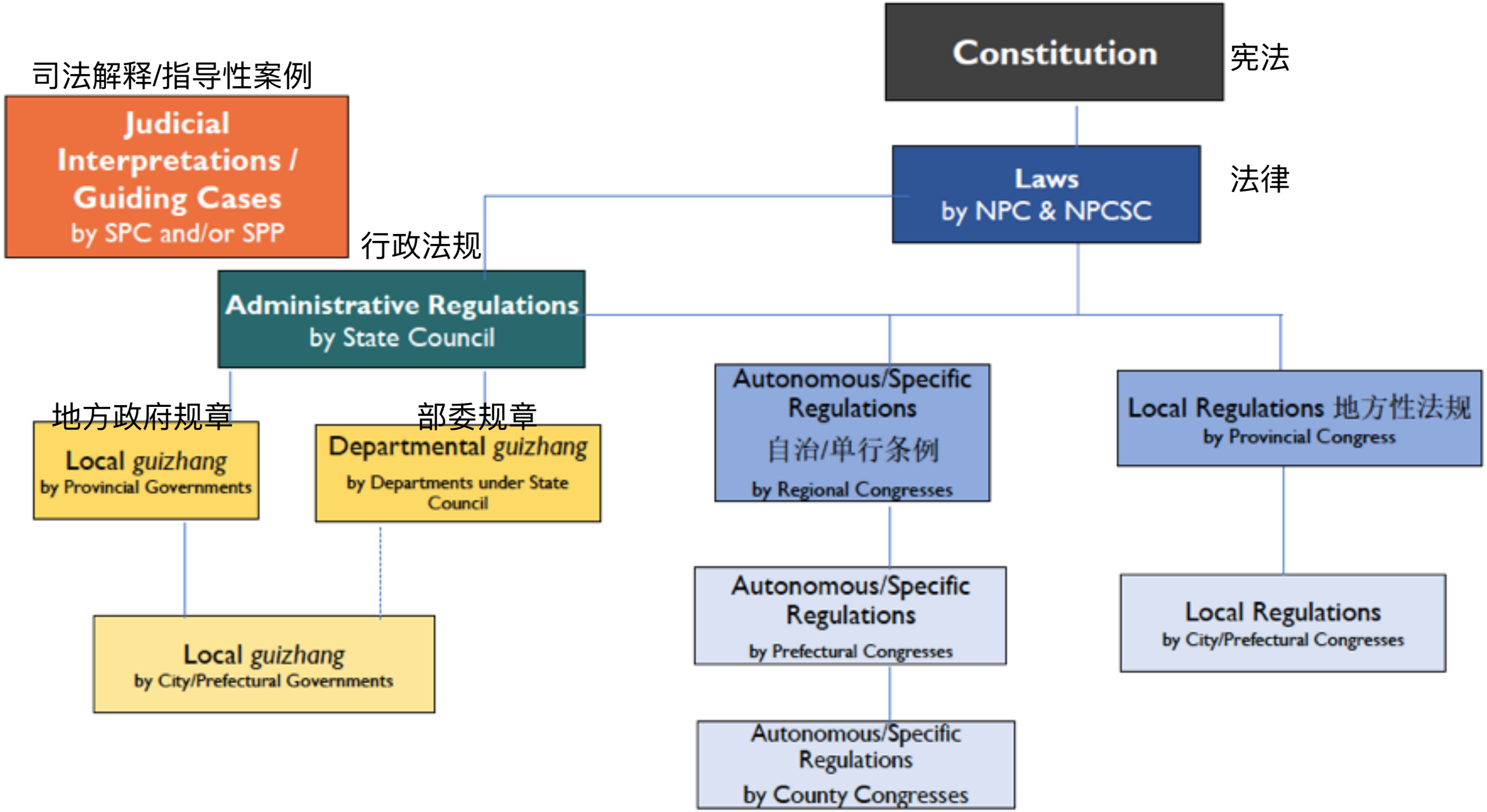
- Constitution (宪法)
- Law (法律)
- Administrative regulation (行政法规)
- *Central departmental rules [guizhang]* (部委规章)

Local

- Local regulation (地方性法规)
- Autonomous regulation (自治条例)
- Specific regulation (单行条例)
- *Local governmental rules [guizhang]* (地方政府规章)

Uncertain:

- Judicial interpretation (司法解释)
- Guiding case (指导性案例)
- Others: "red-headed documents" (红头文件) – decisions, notice, letters, policy documents, etc.


Constitution
宪法
Laws
by NPC & NPCSC
法律
司法解释/指导性案例
Judicial Interpretations / Guiding Cases
by SPC and/or SPP
行政法规
Administrative Regulations
by State Council
地方政府规章
Local guizhang
by Provincial Governments
部委规章
Departmental guizhang
by Departments under State Council
Local guizhang
by City/Prefectural Governments
Autonomous/Specific Regulations
自治/单行条例
by Regional Congresses
Autonomous/Specific Regulations
by Prefectural Congresses
Autonomous/Specific Regulations
by County Congresses
Local Regulations 地方性法规
by Provincial Congress
Local Regulations
by City/Prefectural Congresses

China’s IP System

Constitution Arts. 62, 67; Legislative Law Art. 7

- NPC
  - amend the Constitution enact and amend the basic laws (基本法律) governing criminal matters, civil matters, the state organs, and other matters
- NPC Standing Committee
  - enact and amend other laws when the NPC is not in session, partially supplement and amend laws enacted by NPC cannot violate the basic principles in such laws

Copyright Law of the People's Republic of China (2020 Amendment)

中华人民共和国著作权法(2020修正)

[CLI Code] CLI.1.347867(EN)

Document Number :	Order No. 62 of the President of the People's Republic of China		
Area of Law :	Copyright Regulations		
Level of Authority :	Laws	Date Issued :	11-11-2020
Effective Date :	06-01-2021		
Issuing Authority :	Standing Committee of the National People's Congress		
Status :	Effective		

2010-2020 Annotation Version 2001-2010 Annotation Version 1990-2001 Annotation Version

Patent Law of the People's Republic of China (2020 Amendment)

中华人民共和国专利法(2020修正)

[CLI Code] CLI.1.346982(EN)

Document Number :	Order No. 55 of the President of the People's Republic of China		
Area of Law :	General Provisions on Patent		
Level of Authority :	Laws	Date Issued :	10-17-2020
Effective Date :	06-01-2021		
Issuing Authority :	Standing Committee of the National People's Congress		
Status :	Effective		

2008-2020 Annotation Version 2000-2008 Annotation Version 1992-2000 Annotation Version 1984-1992 Annotation Version

Trademark Law of the People's Republic of China (2019 Amendment)

中华人民共和国商标法(2019修正)

[CLI Code] CLI.1.331486(EN)

Area of Law :	General Provisions on Trademark Optimization of Doing Business		
Level of Authority :	Laws	Date Issued :	04-23-2019
Effective Date :	11-01-2019		
Issuing Authority :	Standing Committee of the National People's Congress		
Status :	Effective		

2013-2019 Annotation Version 2001-2013 Annotation Version 1993-2001 Annotation Version 1982-1993 Annotation Version

- State Council
- Legislative power to make administrative regulations (职权立法) [Constitution Art. 89; LL. Art. 65]
  - implement the existing national laws
  - handle matters within its administrative functions and powers set out in the Constitution
- Delegated legislative power (授权立法) [LL. Arts. 9-13] authorized by NPC & NPCSC to legislate on the matters not yet covered by law

Detailed Rules for the Implementation of the Patent Law of the People's Republic of China (2010 Revision)

中华人民共和国专利法实施细则(2010修订)

[CLI Code] CLI.2.126176(EN)

Document Number :	Order No.569 of the State Council		
Area of Law :	Patent Regulations		
Level of Authority :	Administrative Regulations		
Date Issued :	01-09-2010	Effective Date :	02-01-2010
Issuing Authority :	State Council	Status :	Effective
Topic :	Intellectual Property		

2002-2010 Annotation Version 2001-2002 Annotation Version 1992-2001 Comparison Version 1985-1992 Comparison Version

Regulation on Patent Agency (2018 Revision)

专利代理条例(2018修订)

[CLI Code] CLI.2.326347(EN)

Statement

Document Number :	Order No. 706 of the State Council of the People's Republic of China		
Area of Law :	Patent Agents		
Level of Authority :	Administrative Regulations		
Date Issued :	11-06-2018	Effective Date :	03-01-2019
Issuing Authority :	State Council	Status :	Effective
Pkulaw Note :	Official Reply of the State Council on Approving the Temporary Adjustment of the Provisions of Relevant Administrative Regulations and Documents of the State Council in the Regions Participating in the Pilot Program on Comprehensively Deepening the Innovative Development of Trade in Services (Issued on 09-15-2021 Effective on 09-15-2021)		

1991-2018 Comparison Version

Regulation on National Defense Patent

国防专利条例

[CLI Code] CLI.2.55510(EN)

Statement

Area of Law :	National Security		
Level of Authority :	Administrative Regulations		
Date Issued :	09-17-2004	Effective Date :	11-01-2004
Issuing Authority :	State Council Central Military Commission		
Status :	Effective		
Pkulaw Note :	Decision of the State Council on Cancelling and Adjusting a Group of Administrative Approval Items and Other Matters (2015) (Issued on 02-24-2015 Effective on 02-24-2015)		

Regulation for the Implementation of the Copyright Law of the People's Republic of China (2013 Revision)

中华人民共和国著作权法实施条例(2013修订)

[CLI Code] CLI.2.194531(EN)

Sta

Document Number :	Order No. 633 of the State Council		
Area of Law :	Copyright Regulations		
Level of Authority :	Administrative Regulations		
Date Issued :	01-30-2013	Effective Date :	03-01-2013
Issuing Authority :	State Council	Status :	Effective
Topic :	Comprehensive		

2002-2011 Annotation Version 1991-2002 Comparison Version

Regulation on the Collective Administration of Copyright (2013Revision)

著作权集体管理条例(2013修订)

[CLI Code] CLI.2.214801(EN)

Document Number :	Order No. 645 of the State Council of the People's Republic of China		
Area of Law :	Copyright Regulations		
Level of Authority :	Administrative Regulations		
Date Issued :	12-07-2013	Effective Date :	12-07-2013
Issuing Authority :	State Council	Status :	Effective

2004-2013 Annotation Version

Provisions on the Implementation of the International Copyright Treaties (2020 Revision)

实施国际著作权条约的规定(2020修订)

[CLI Code] CLI.2.348776(EN)

Document Number :	Order No. 732 of the State Council of the People's Republic of China		
Area of Law :	Copyright Regulations Optimization of Doing Business		
Level of Authority :	Administrative Regulations		
Date Issued :	11-29-2020	Effective Date :	11-29-2020
Issuing Authority :	State Council	Status :	Effective

1992-2020 Annotation Version

Regulation on the Implementation of the Trademark Law of the People's Republic of China (2014 Revision)

中华人民共和国商标法实施条例(2014修订)

[CLI Code] CLI.2.224344(EN)

Document Number :	Order No. 651 of the State Council		
Area of Law :	Trademark Use Management Trademark Regulations Optimization of Doing Business		
Level of Authority :	Administrative Regulations		
Date Issued :	04-29-2014	Effective Date :	05-01-2014
Issuing Authority :	State Council	Status :	Effective
Topic :	Comprehensive		

2002-2014 Comparison Version

- Departments of State Council- *Departmental Rules*
  - Recognized in LL. Chapter 2 Shall be made, amended, and repealed in accordance with the LL. Made by central ministries and departments http://english.www.gov.cn/state_council/2014/09/03/content_281474985533579.htm
  - Scope of power Implement laws, administrative regulations, orders (命令), and directives (指示) of State Council Filing in State Council Within the maker's admin function and (regulative) power Restrictions articulated by Art. 80 of LL. Not to derogate the rights or increase the obligations of citizens and other private parties Not to expand the maker's power or reduce its statutory duties

专利审查指南(2017修正) 已被修改

【法宝引证码】CLI.4.313125

制定机关：	国家知识产权局 机构沿革	公布日期：	2017.02.28
施行日期：	2017.04.01	时效性：	已被修改
效力位阶：	部门规章	法规类别：	专利申请与审批
修改依据：	国家知识产权局关于修改《专利审查指南》的决定(2019)、 国家知识产权局关于修改《专利审查指南》的公告(国家知识产权局公告第343号)、 国家知识产权局关于修改《专利审查指南》的公告(2020)		

Patent Examination Guidelines

China National Intellectual Property Administration

Trademark Trial and Appeal Rules

商标评审规则(2014修订)

[CLI Code] CLI.4.226643(EN)

Document Number :	Order No. 65 of the State Administration for Industry and Commerce		
Area of Law :	General Provisions on Trademark		
Level of Authority :	Departmental Rules	Date Issued :	05-28-2014
Effective Date :	06-01-2014		
Issuing Authority :	State Administration for Industry & Commerce (dissolved)		
Status :	Effective		
Topic :	Industry and Commerce		

Measures for the Pledge Registration of Copyrights

著作权质权登记办法

[CLI Code] CLI.4.142297(EN)

Document Number :	Order No. 8 of the National Copyright Administration		
Area of Law :	Copyright Registration		
Level of Authority :	Departmental Rules	Date Issued :	11-25-2010
Effective Date :	01-01-2011		
Issuing Authority :	National Copyright Administration		
Status :	Effective		

English | Title | patent | New Search | Search in Resu

exact | fuzzy | same text | same paragraph | same sentence | Legislative Process | Gazettes | Search by CLI

Legal News(117) | Laws & Regulations(239) | Judicial Cases(303) | Law Journals(1626) | International Treaties(10) | White Papers(2) | Legal Glossary(89) | Guide

Home > English > Laws & Regulations

Condition : Title+Exact : patent | Clear

Translation Scope

Full Text Translation (220)

Title Translation (19)

Level of Authority

+ Laws (11)
+ Administrative Regulations (10)
+ Judicial Interpretations (48)
+ Departmental Rules (152)
Industry Regulatio
+ Local Regulations (
Local Government Rules (1)
Local Regulatory Documents (3)
Local Judicial Documents (1)

Select All | Download | ... | Total:239 | Group by: Level of Authority

Laws (11)

1. Decision of the Standing Committee of the National People's Congress on Several Issues concerning Judicial Procedures for Patent and Other Intellectual Property Cases
全国人民代表大会常务委员会关于专利等知识产权案件诉讼程序若干问题的决定
Effective / Issued on 10-26-2018 / Effective on 01-01-2019

2. Patent Law of the People's Republic of China (2020 Amendment)
中华人民共和国专利法(2020修正)
Effective / Issued on 10-17-2020 / Effective on 06-01-2021
Revision History

3. Decision of the Standing Committee of the National People's Congress to Amend the Patent Law of the People's Republic of China (2020)
全国人民代表大会常务委员会关于修改《中华人民共和国专利法》的决定(2020)

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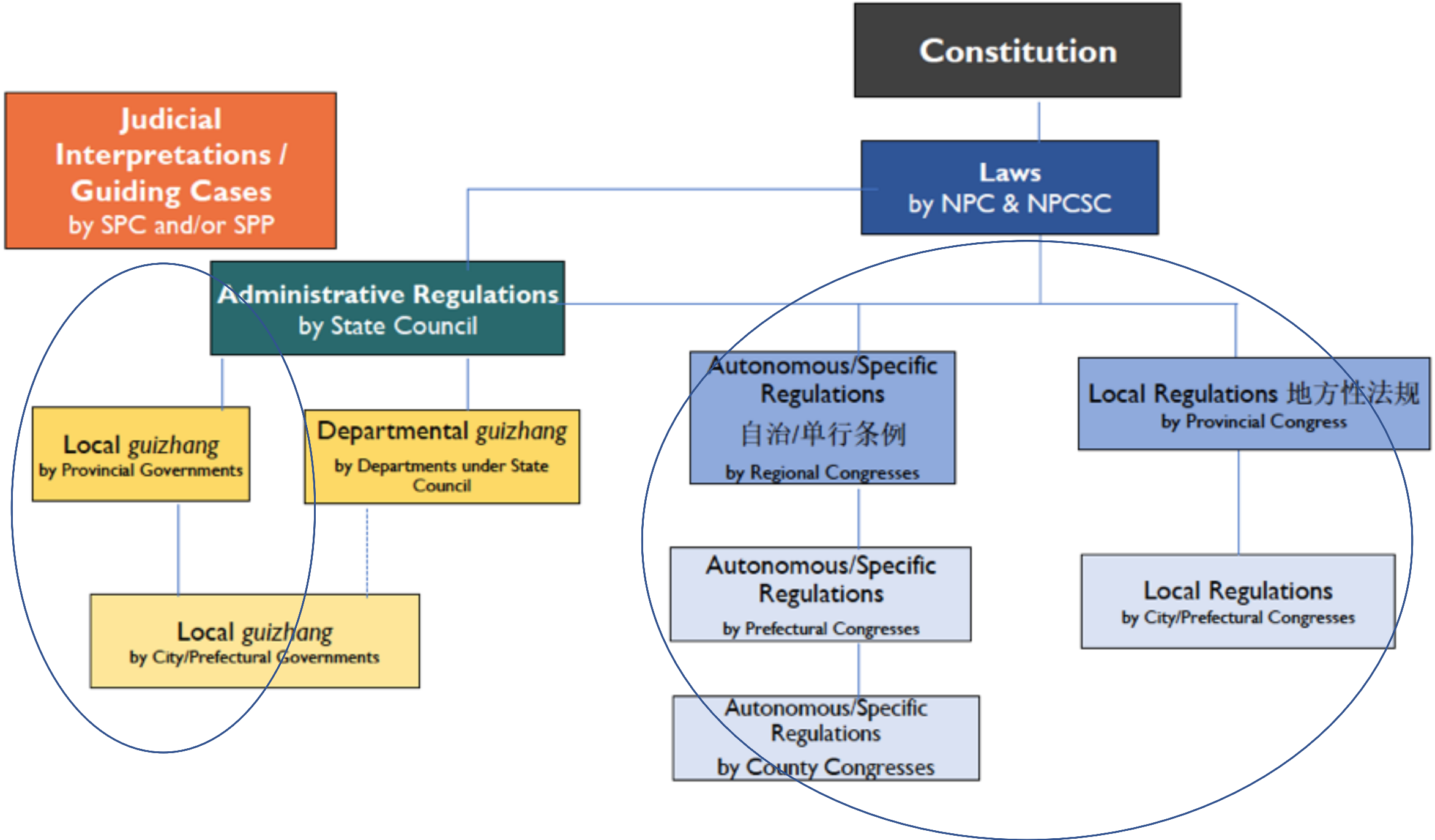
Constitution
Laws
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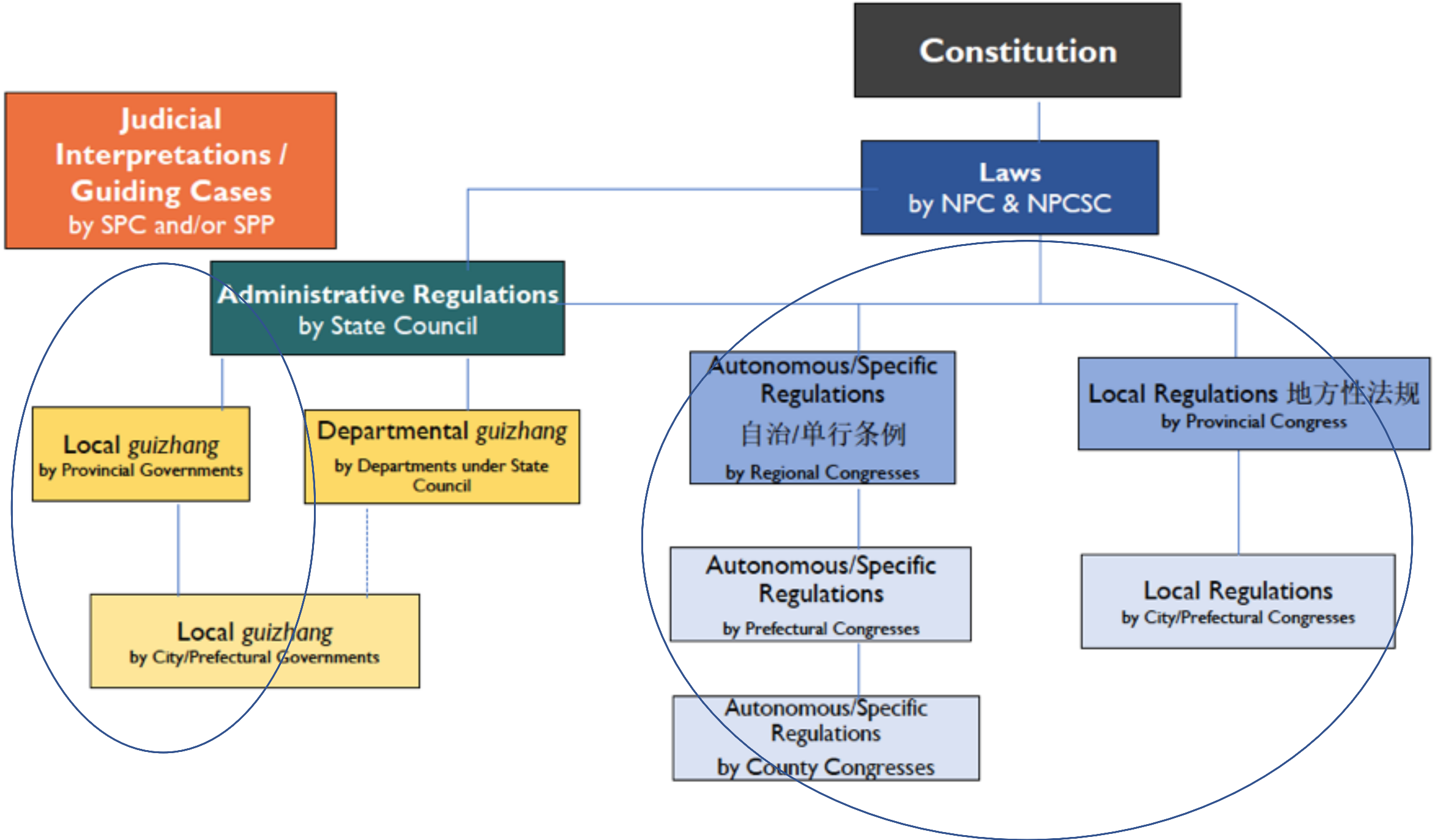
- Local people's congress (LPC) and LPCSC
  - Provincial-level – pre-enactment approval by NPCSC (for autonomous regions)
  - Prefectural-level – pre-enactment approval by provincial PCSC, filing in NPCSC and State Council
- Scope of power [LL. Art. 73]
  - Implement laws and admin. regs. and take into account local/special circumstances
  - Local affairs only
    - prefectural-level: limited to urban & rural construction & management, environmental protection, historical & cultural protection – LL. Art. 72
  - Pilot and temporary (先行制定地方性法规)
    - not on matters of exclusive legislative jurisdiction
    - in the areas in which central legislatures have not been made
    - once laws or admin. regs. are effective, the inconsistent local provisions shall be repealed），

- Autonomous Regulations [LL. Art. 75]
  - Autonomous regulations (自治条例)
  - Regulations on specific subject matters (单行条例)
  - 3 levels: regional, prefectural, county
    - e.g. Haibei Tibetan Autonomous County – minimum age for marriage (male: 20, female:18) is two years lower than national law
- Stricter control: effective upon prior approval by NPCSC or provincial-level PC
- Filing at provincial-level PC, NPCSC and State Council

- Special Economic Zones (SEZ) [LL. Art. 74]
  - Hainan海南、Shenzhen深圳、Zhuhai珠海、Xiamen厦门、Shantou汕头
  - Delegated by NPC: enact local regulations for the territory
  - Wider power than normal province or cities

- Local Rules (Guizhang)
  - Made by Provincial or City level governments – LL. Art. 82
  - Provincial guizhang have the same legal effect as central departmental guizhang – LL. Art. 91
  - National higher than local in practice
  - Filing in State Council and Provincial PCSC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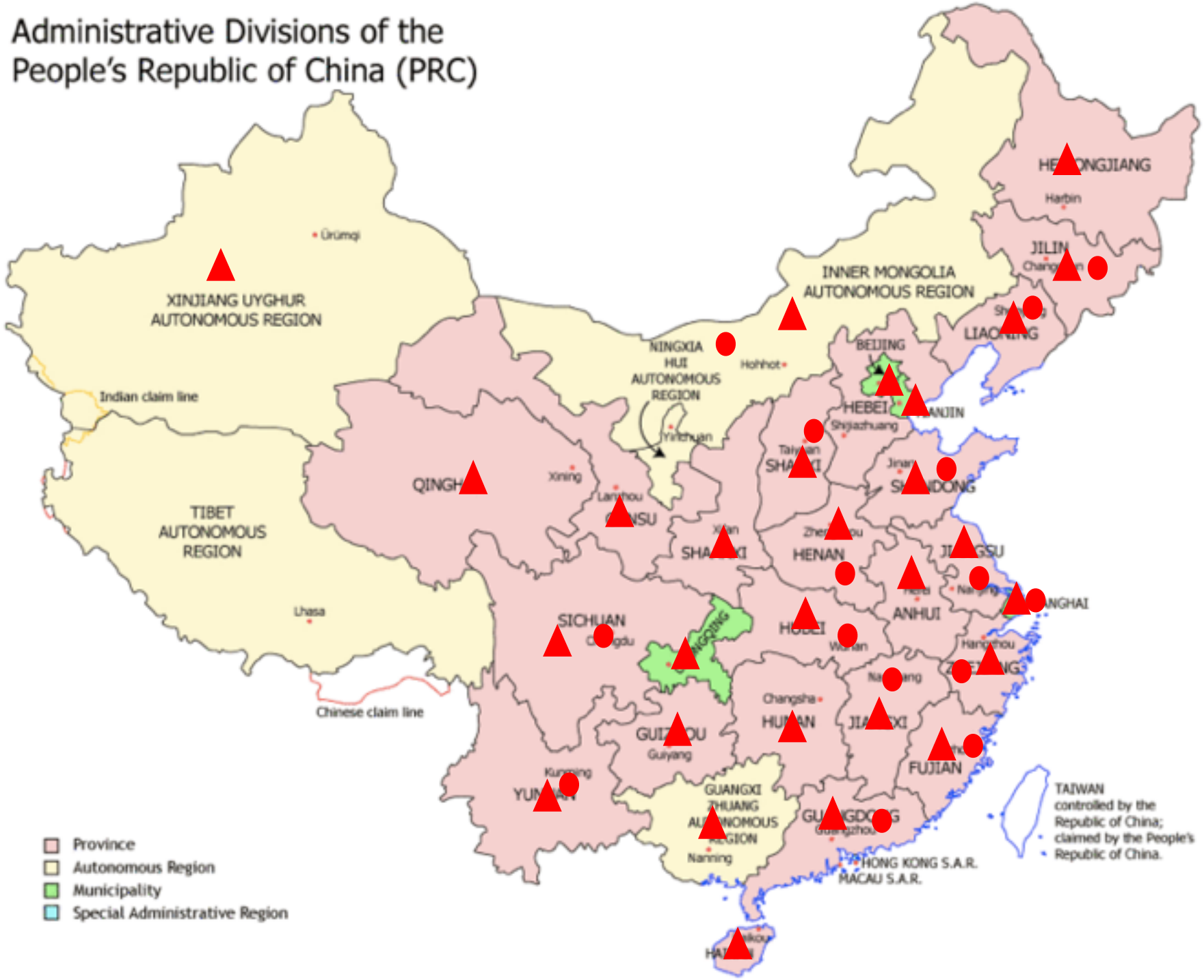


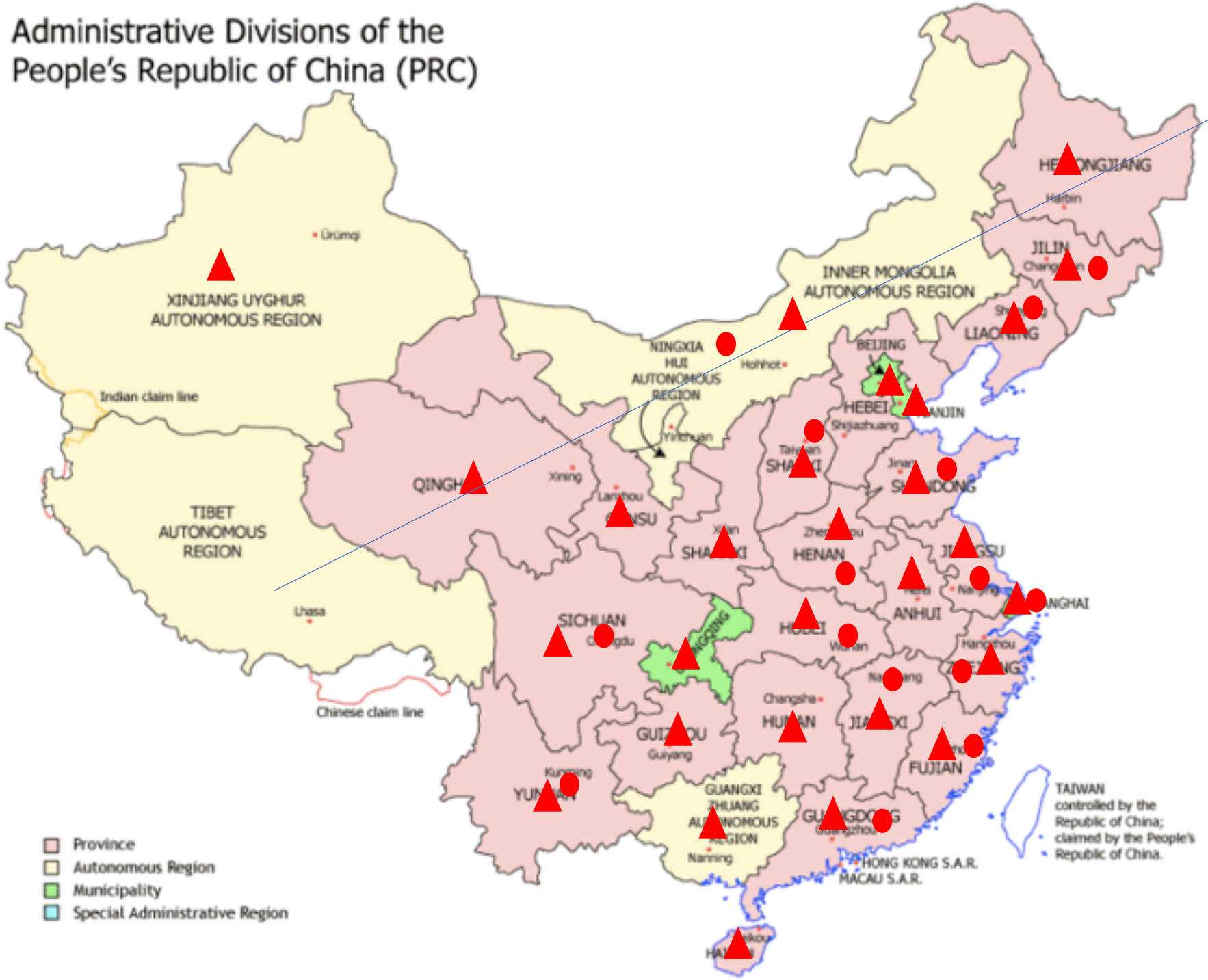
Tibet does not have province-level IP law.

15 provincial administrative regions both have province-level IP law and a city or cities that have city level IP law. In general, these cities are top cities in that region in terms of economy development.

▲ Province-level IP Law

● City-level IP Law

Administrative Divisions of the People's Republic of China (PRC)



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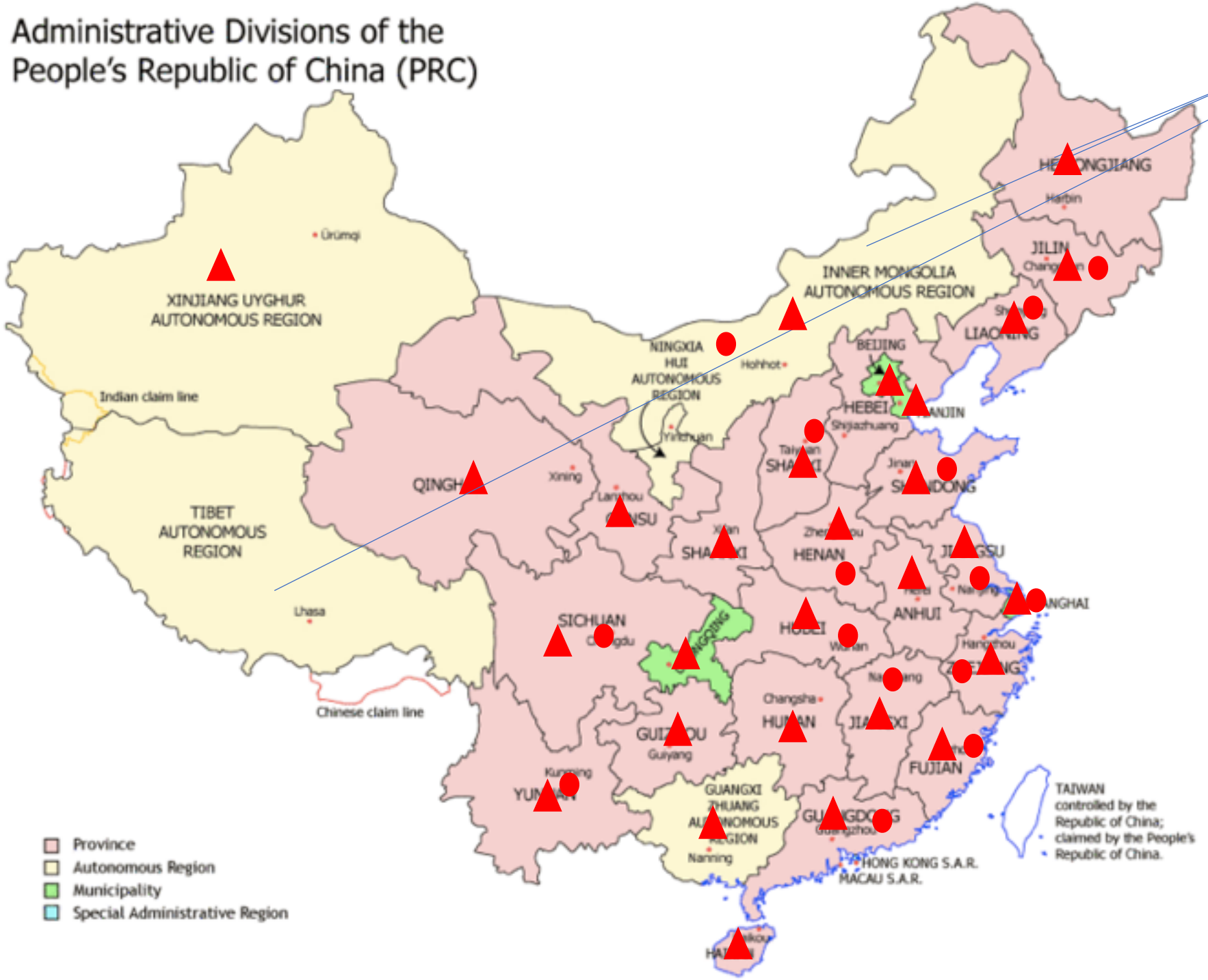

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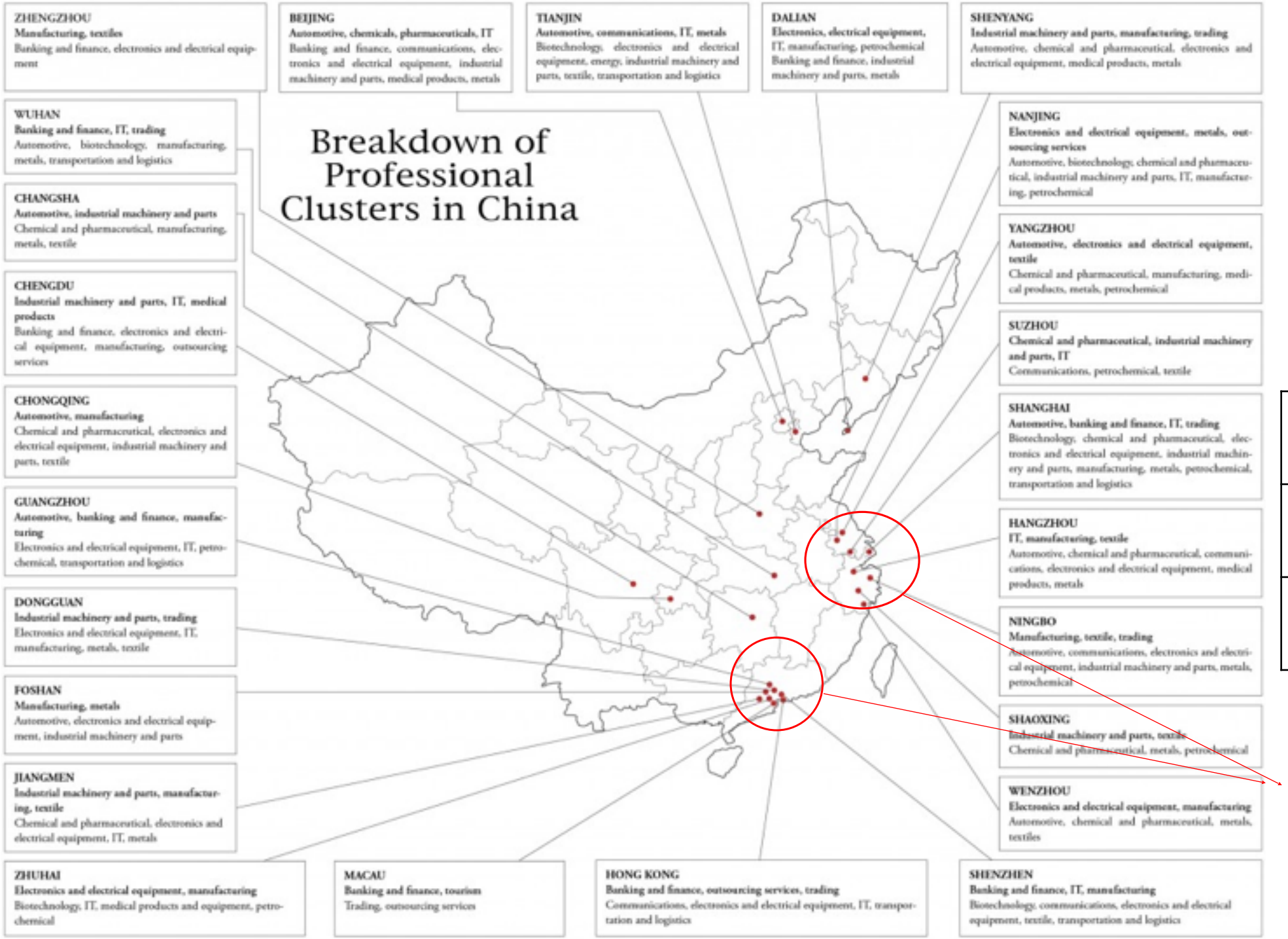

Local intellectual property laws have two characteristics.

- First, they respond to local industrial needs.
- Second, they grant a higher level of IP protection.

City level IP protection
Province level IP protection
Nation level IP protection

The Yangtze River Delta region and the Pearl River Delta region have the highest level of intellectual property protection

Guangdong is a coastal province in South China. It has a bigger economy than any other province in the country. In 2021, its nominal GDP was 1.95 trillion USD (12.4 trillion CNY). The Pearl River Delta Economic Zone is a hub for high-tech manufacturing, foreign trade, and international business. Located in this zone are two of the four top Chinese cities and the top two Chinese prefecture-level cities by GDP;

Guangzhou, the capital of the province, and Shenzhen, the first special economic zone in the country. These two are among the most populous and important cities in China, and have now become two of the world's most populous megacities and leading tech centers in the Asia-Pacific region.

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Guangzhou

Shenzhen

Guangdong–Hong Kong–Macao Greater Bay Area
Guangdong
Shantou
Guangzhou
Zhaoqing
Huizhou
Foshan
Dongguan
Shenzhen
Zhongshan
Jiangmen
Zhuhai
Hong Kong
Macao

Nation level IP laws:
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Textile industry
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Localization of IP Laws

Why allow local governments to make local IP laws?

- Policy concerns:

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- The allocation of legislative power should balance the benefits and hazards.

The Outline for Building an Intellectual Property Powerhouse (2021-2035) issued by the CPC Central Committee and the State Council

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为统筹推进知识产权强国建设，全面提升知识产权创造、运用、保护、管理和服务水平，充分发挥知识产权制度在社会主义现代化建设中的重要作用，制定本纲要。”

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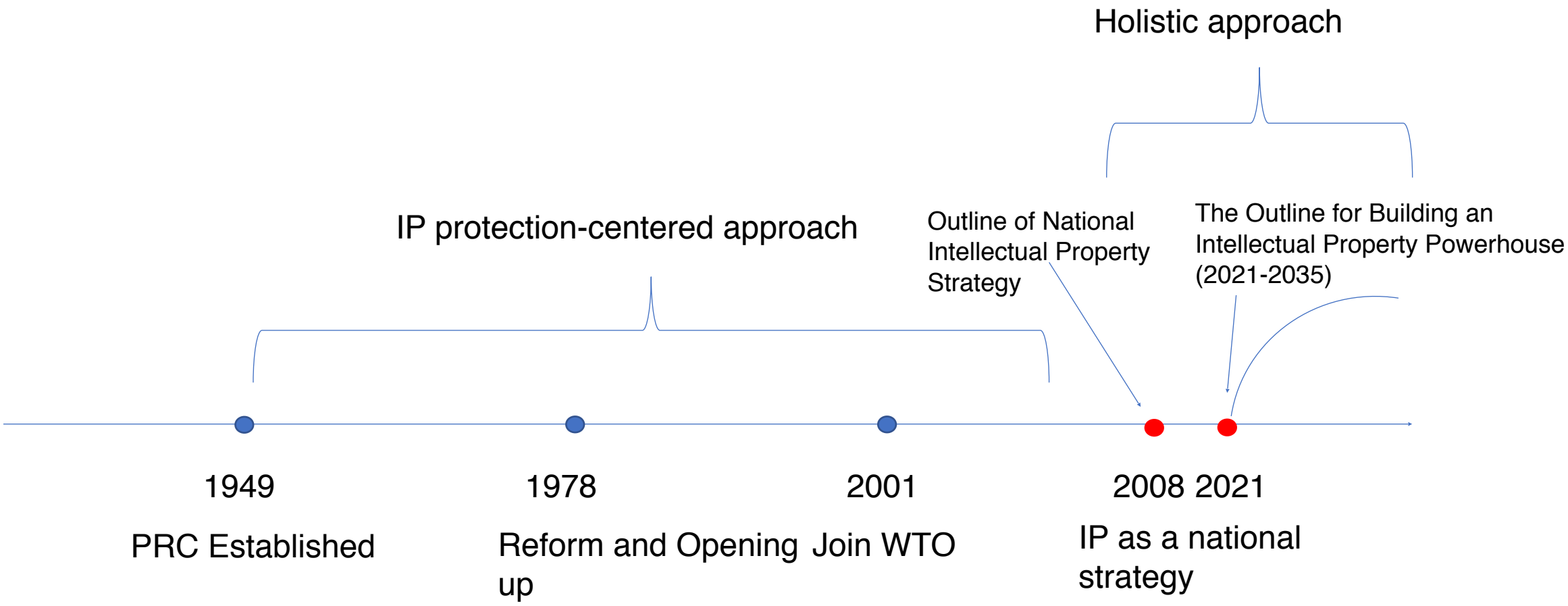
A holistic approach to IP system

The evolution of China's approach to IP system



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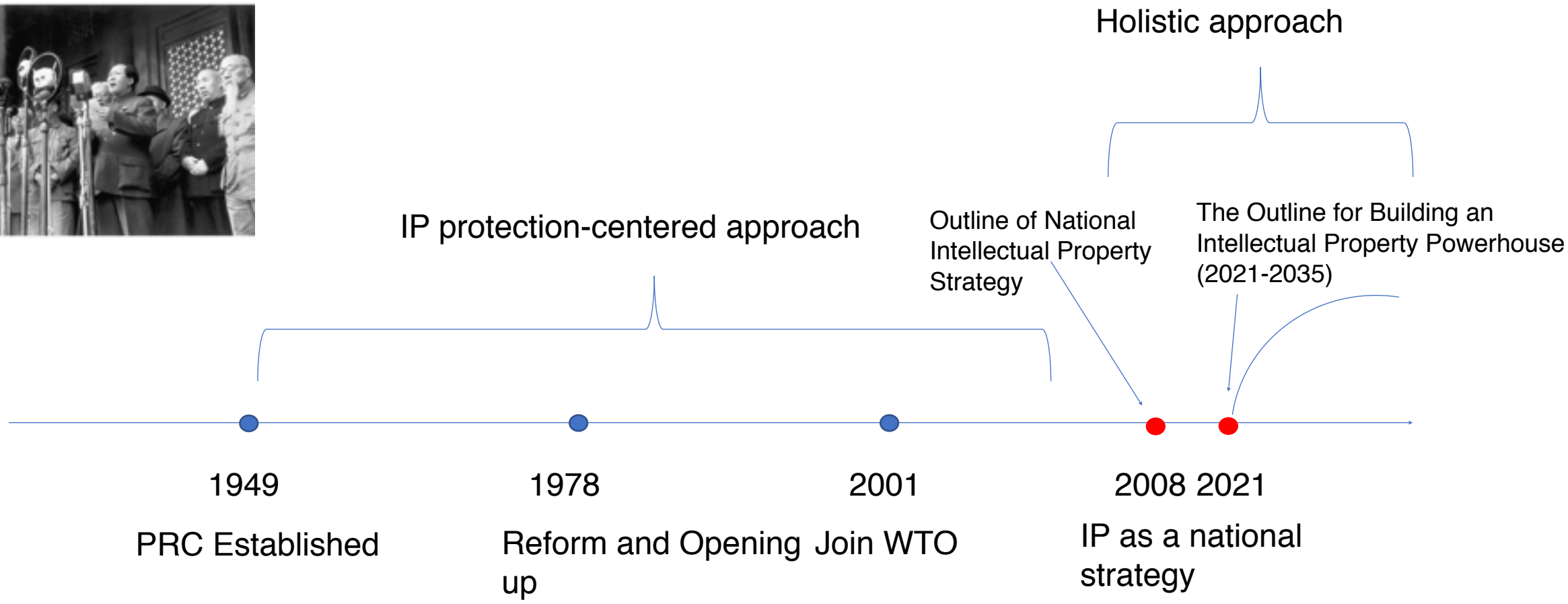

The evolution of China's approach to IP system

Holistic approach

IP protection-centered approach

Outline of National Intellectual Property Strategy

The Outline for Building an Intellectual Property Powerhouse (2021-2035)

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1978 Reform and Opening up

2001 Join WTO

2008 2021 IP as a national strategy

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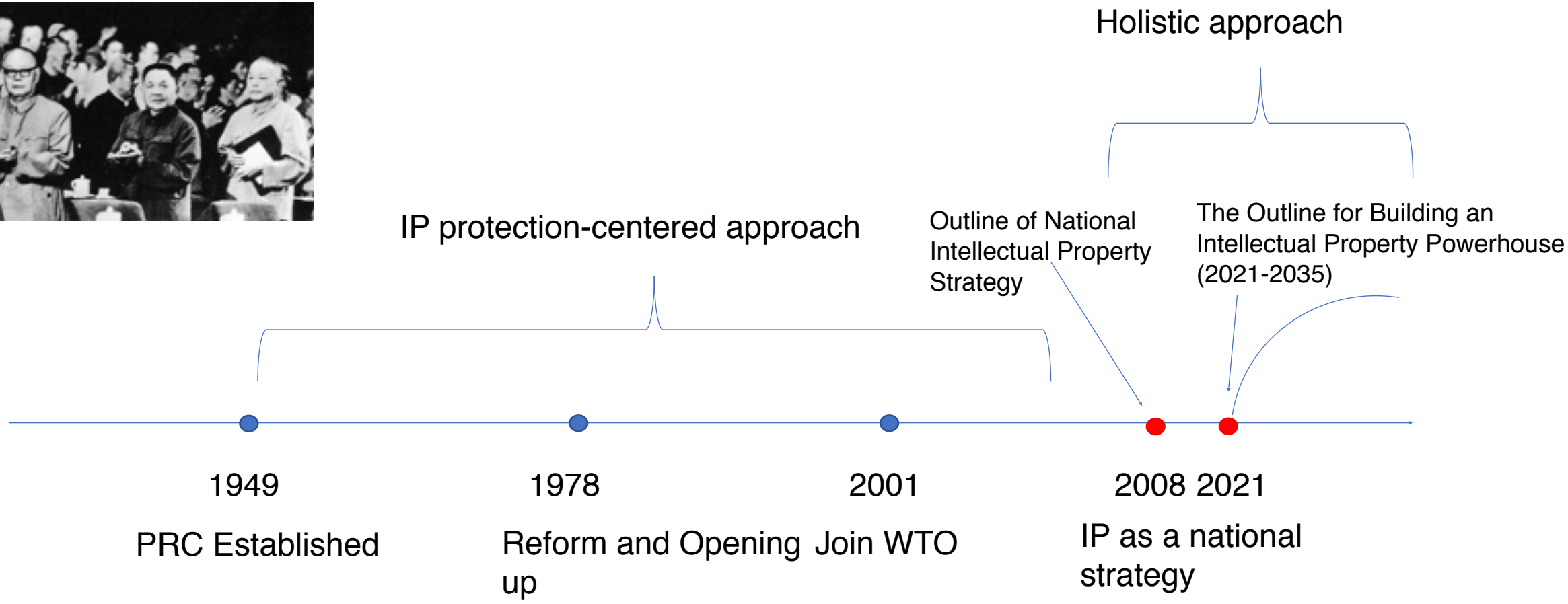

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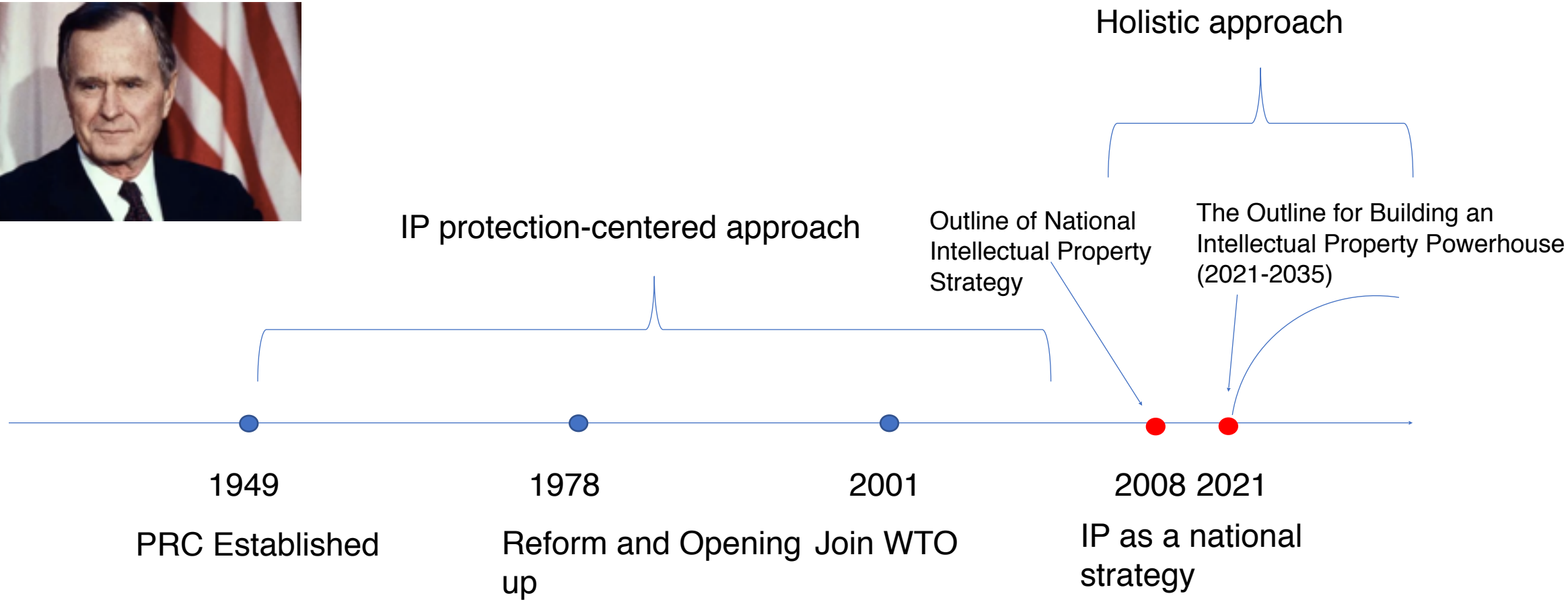

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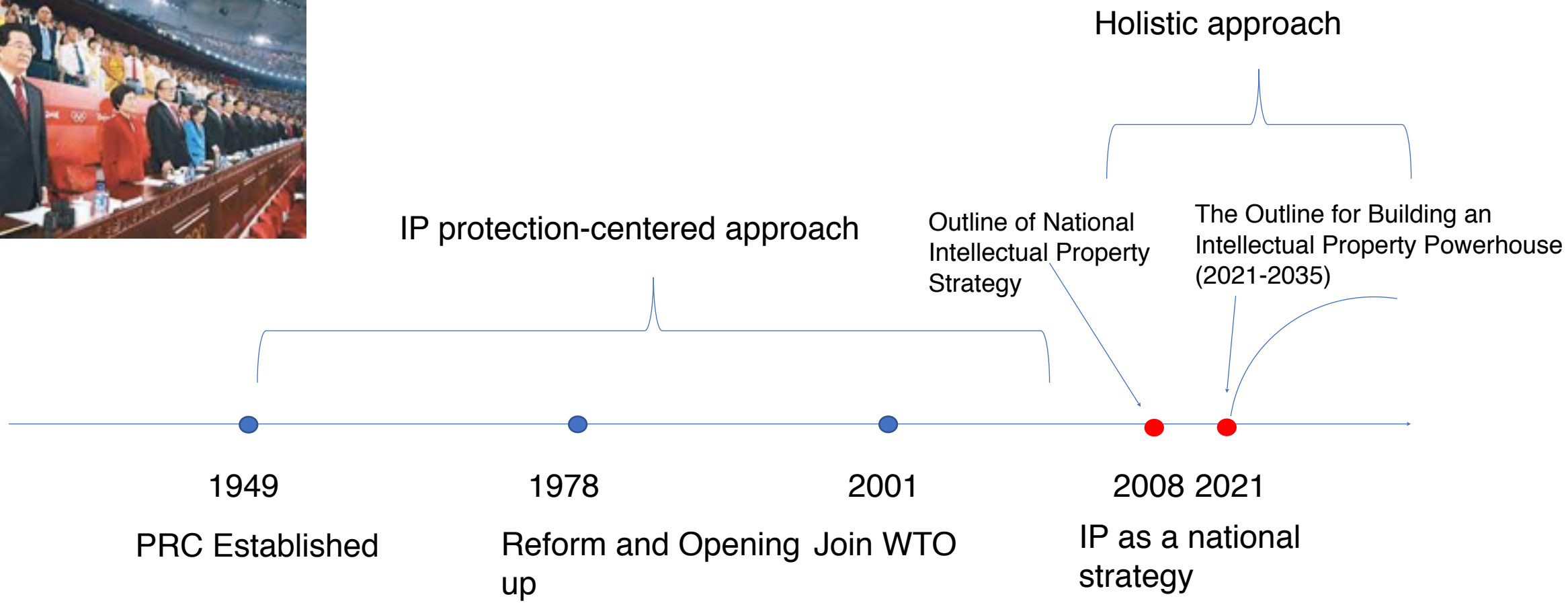
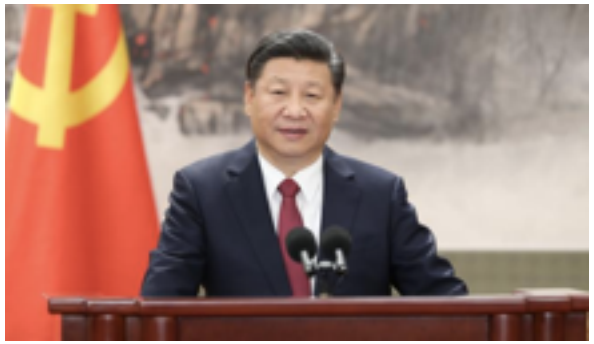
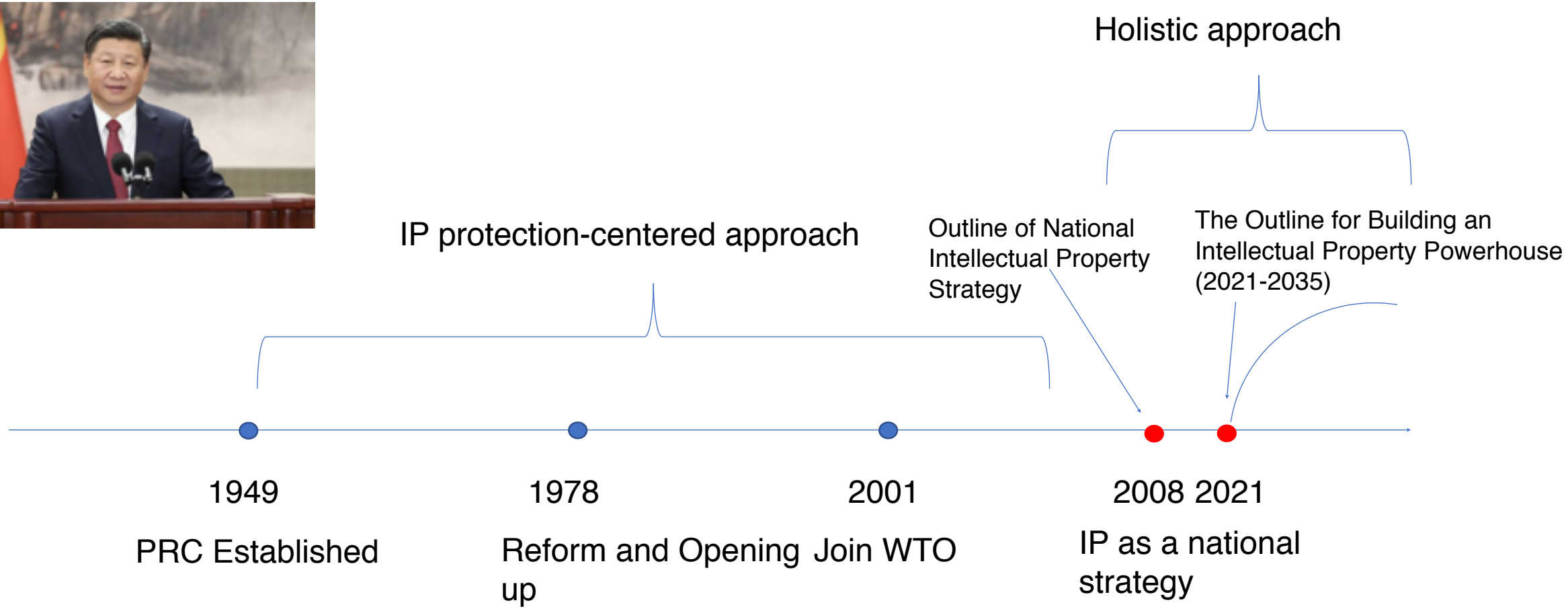


The evolution of China's approach to IP system





The evolution of China's approach to IP system

Holistic approach

IP protection-centered approach

Outline of National Intellectual Property Strategy

The Outline for Building an Intellectual Property Powerhouse (2021-2035)

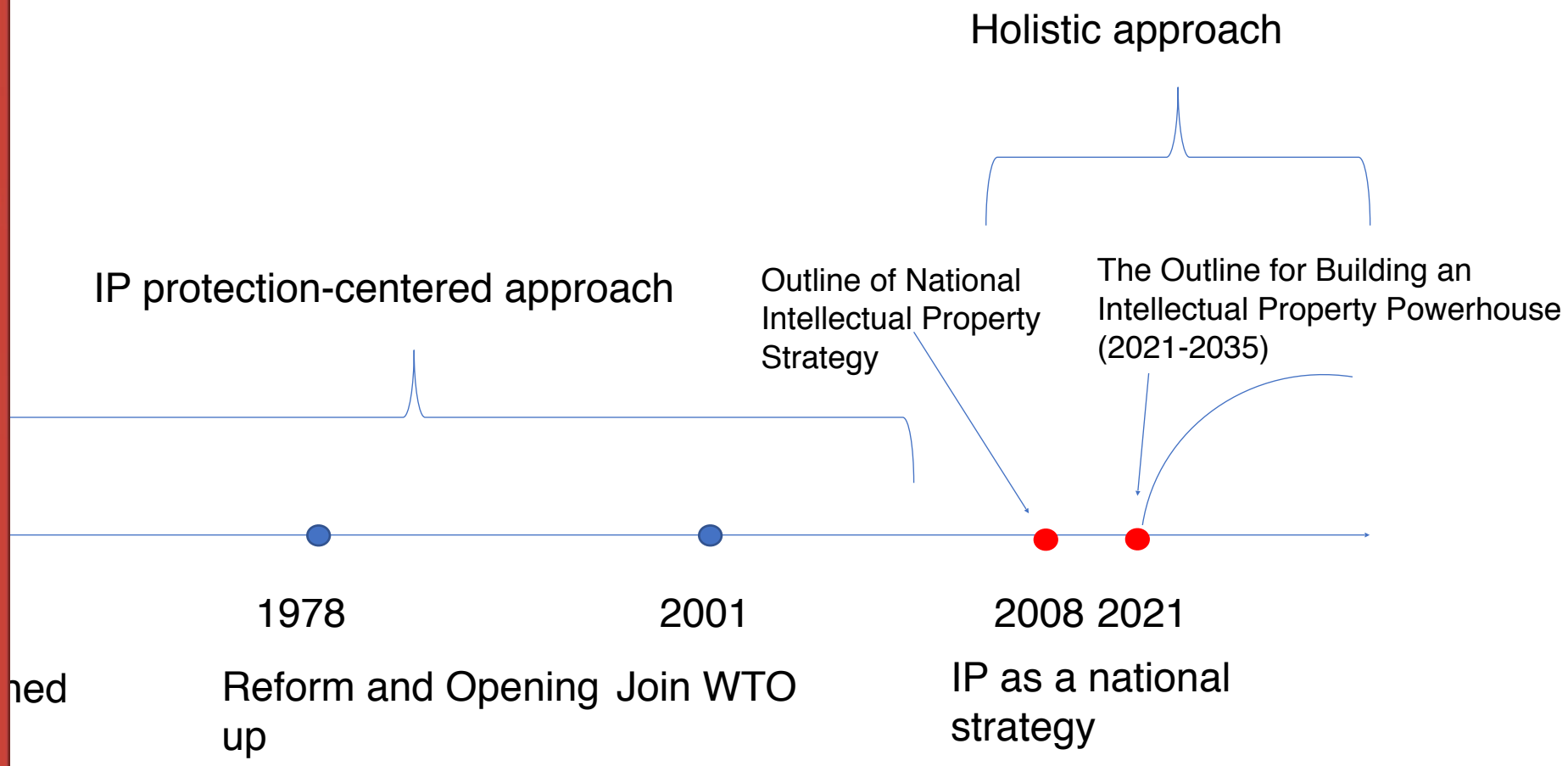
1949 PRC Established

1978 Reform and Opening up

2001 Join WTO

2008 2021 IP as a national strategy

The evolution of China's approach to IP system



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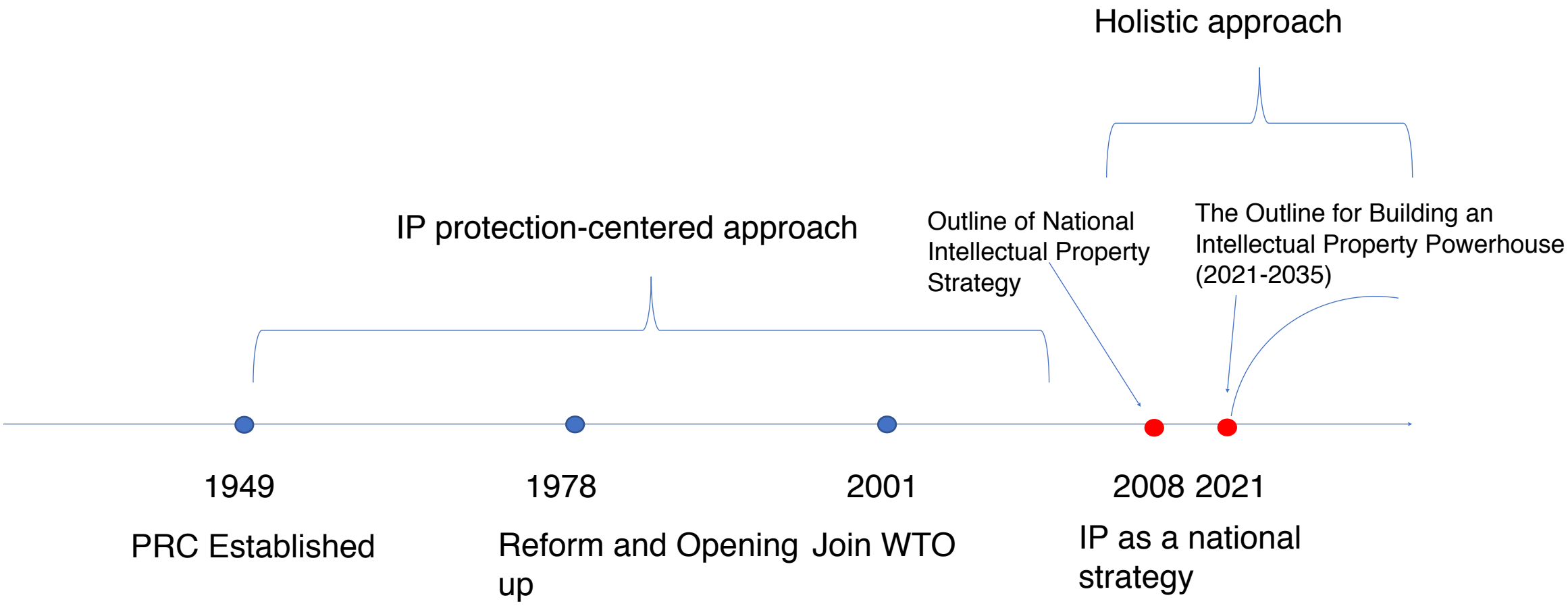

A holistic approach to IP system

- Creation
- Use
- Protection
- Management
- Services

Patent law
Copyright law
Trademark law
…

Granting exclusive rights to intellectual products or symbols and enforcing these rights with the court system and administrative organs

A holistic approach to IP system

- Creation
- Use
- Protection
- Management
- Services

- Prizes
- Government grants
- Government procurement
- Tax credits

e.g., Article 9 of the *Regulations on the Promotion and Protection of Patents in Fujian Province* provides that the provincial government should establish patent prizes to honor the patentee, inventor, or designer of a patent-related project who produces "significant economic and social benefits" within the administrative region of the province. In 2021, the size of the award reached 1 million RMB, 300,000 RMB, 200,000 RMB and 100,000 RMB, corresponding to the grand prize and the first, second, and third prizes respectively.

e.g., Article 9 of the *Shenzhen Special Economic Zone Intellectual Property Protection Regulations* makes "the quality and quantity of patents obtained" an "important factor" in the initiation, approval, and verification of government-funded research and development projects and technological reform projects.

e.g., Article 12 of the *Regulations on the Promotion and Protection of Patents in Fujian Province* provides that "government procurement and other purchases using fiscal funds shall give priority to the purchase of patented products under equal conditions."

e.g., Article 16 of the *Regulations on the Promotion of Patents in Jiangsu Province* stipulates that in calculating taxable income, if "research and development expenses incurred for the development of new technologies, new products or processes" do not form intangible assets and are included in the current profit and loss, "on top of the actual deduction in accordance with the regulations, 50% of the research and development expenses shall be deducted."

A holistic approach to IP system

- Creation
- Use
- Protection
- Management
- Services

- Prizes
- Government grants
- Government procurement
- Tax credits
- Financing
- Incubators
- Trading centers

e.g.,
Article 30 of the *Regulations on Promotion of Patents in Shenyang City*
Article 14 of the *Regulations on Promotion of Patents in Shenyang City*
Article 14 of the *Regulations on the Promotion and Protection of Patents in Luoyang City*
Article 14 of the *Regulations on the Promotion and Protection of Patents in Chongqing City*

e.g., Article 11 of the *Regulations on the Promotion and Protection of Intellectual Property in Nanjing City*

Nanjing Dandelion incubator

e.g., Article 16 of the *Regulations on the Protection and Promotion of Intellectual Property in Shandong Province*

Case: Qiyi Century Intellectual Property Supply Chain Finance Asset Backed Special Program
奇艺世纪知识产权供应链金融资产支持专项计划

e.g., Article 4 of the *Regulations on Promotion and Protection of Patents in Fujian Province*

National Patent Technology (Fujian) Exhibition and Trading Center 国家专利技术(福建)展示交易中心

A holistic approach to IP system

- Creation
- Use
- Protection
- Management
- Services

Enterprise Intellectual Property Management System
National standard GB/T29490-2013

e.g., Guidance on Further Standardizing and Strengthening the Management of State-owned Assets of Administrative and Institutional Entities
知识产权对外转让有关工作办法（试行）

“IP standards compliance”（“知识产权贯标”）
e.g., Article 10 of Fujian province IP law

- measures to promote the formation of intellectual property management systems in companies;
- measures to regulate intellectual products that are state-owned or are related to important public interest and national security;
- measures to collect and manage information regarding intellectual property rights.

e.g., Measures for the Administration of Prohibited Exports of Restricted Technologies. In March 2018, the State Council promulgated the *General Office of the State Council on the Issuance of Measures Concerning the Foreign Transfer of Intellectual Property Rights (for Trial Implementation)*

A holistic approach to IP system

- Creation
- Use
- Protection
- Management
- Services
  - Providing public services
  - Supporting and regulating private services

e.g.,
Article 8 of the *Regulations on Patent Promotion and Protection of Chongqing City*
Article 23 of *Regulations on the Promotion of Patents in Shenyang City*

e.g.,
Art. 17 of the *Regulations on Patent Promotion in Jiangsu Province:* exempting service providers from business taxes
Art. 11 *Regulations on the Protection of Intellectual Property in Hainan Free Trade Port*: prohibiting commissions from assisting in malicious trademark applications

A holistic approach to IP system

Why adopt a holistic approach to IP system?

- Policy Concerns:

A holistic approach to IP system

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- Policy Concerns:
  - Benefits:
    - Emerging economies typically have booming innovation industries on the one hand, and a large domestic consumer demand for intellectual products on the other. It can be difficult for legislators in these developing countries to balance the tension between creators and consumers only by adjusting the level of protection that their intellectual property rights system grants.
    - While increasing the protection of intellectual property rights might have the effect of making technology owners in developed countries more willing to export that technology, if companies in these emerging economies do not develop the capacity to absorb technology as well as to create and exploit it, they will not be able to compete with the technology exporters in the long run and might find themselves trapped at the bottom of the value chain.

A holistic approach to IP system

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  - Hazards:
    - May pose the risk of excessive government intervention in innovation
      - Challenges regarding decision-making
      - Challenges regarding rent-seeking