

Embracing an IP strategy amid WTO compliance

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With China's entry into the World Trade Organization (WTO) in December 2001, IP rights (IPR) became an increasingly important topic. So far, much public attention to IPR has focused on counterfeit goods, pirate software, and movies. However, in the future one can expect the discussion to shift from consumer goods to higher value-added goods such as advanced technology. After all, China is the world's largest recipient of foreign direct investment, at over US\$80 billion in 2008, and technology transfers alone constituted almost one-fifth of this amount. On its part, the Chinese government is determined to embrace an IPR strategy to lay the foundation for a knowledge-based economy. The emergence of this IPR strategy is the most noteworthy development in the field of IPR in post-WTO China.

The idea of implementing an IPR strategy was first put forward by the Jiu San (September 3) Society, one of China's eight non-communist parties at the annual conference of the Chinese People's Political Consultative Conference (CPPCC) in 2003.¹ According to Wu Boming, who made the proposal to the CPPCC on behalf of the Jiu San Society, the creation, possession, and exploitation of IPR has become indispensable from the perspective of an enterprise or even a nation in competition. The idea resonated among China's enterprises, intellectuals, and government officials and was finally accepted by the State Intellectual Property Office (SIPO) as the official policy.² In June 2005, the Leading Group for the Work on the Formulation of the State Intellectual Property Rights Strategy was established to formulate an IPR strategy and the then Deputy Prime Minister Wu Yi was made Head of Leading Group.³ Accordingly, the IPR strategy was raised the state level. On 15 October 2007, the 17th Congress of the Communist Party of China (CPC) endorsed the concept of

Key issues

- This article explores the circumstances in which China has recently formulated an IPR strategy.
- The author describes the content and approach that has been adopted in the Chinese IPR strategy.
- Finally, the author investigates the implications of the IPR strategy, particularly to multinational corporations.

implementing a state IPR strategy.⁴ On 5 June 2008, the State Council promulgated the *Guidelines of the State Intellectual Property Rights Strategy*.⁵

Why is China formulating an IPR strategy?

The increasing importance of IPR in global competition

Intellectual creations have gained increasing importance in the context of the knowledge-based economy, particularly in promoting technological innovation and social and economic growth.

The rather tangled history of Sino-US trade negotiations over IPR matters and the central role that IPR played during the negotiations leading to the last round of the General Agreement on Tariffs and Trade (GATT) are well-known examples of the increasing importance of IPR on the world economic scene.

In a word, while the need for IPR on the part of government arises from the social objective of promoting the creation of new types of information to add to

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1 People's Daily 10 March 2003.

2 W Jingchuan, Commissioner of the SIPO, announced the decision in his remarks at the 2003 Intellectual Property Strategy and Enterprises' Key Competitiveness Forum, Shanghai. China Daily, 11 November 2003.

3 People's Daily 30 June 2005.

4 Secretary-General of the CPC reiterated this in his report to the CPC congress.

5 Available at the website of the SIPO: http://www.sipo.gov.cn/sipo2008/yw/2008/200806/t20080610_406106.html.

the existing knowledge base and the creation of markets to stimulate initiatives in intellectual creation, enterprises are given the legal ability to set the terms on which their IPR may be used. Moreover, as a monopoly by nature, IPR has become an important institutional tool for companies to create market share and market value. In fact, in today's competitive environment, IPR is a significant factor in almost every company's ability to vie for existence and development.

Lessons taught within the international community

In the past two decades, two key events had a lasting impression on China. The first is that the Uruguay Round included IPR for the first time in the history of the multilateral trading system. IPR remained central throughout the negotiation process of the Uruguay Round. The second is the United States' forceful enforcement of US IPR in China and constant exertion of pressure on China to institutionalize an IPR regime of a higher standard of protection. These two events highlight the importance of IPR in the eyes of the developed economies. It is no exaggeration to say that the two events had been a rude awakening for China.

Response to IPR-based competition from multinational corporations

It is well perceived that powerful foreign rivals, with advanced technologies and optimized-management models, may plot against domestic manufacturers by all means in order to grab as much market share as possible. Given its monopolistic nature, IPR is an excellent, if not the best, means available to multinational corporations. China's enterprises have been increasingly involved in assertion of IPR by multinational corporations, where IPR holders press for enforcement either through direct face-to-face confrontation, by escalating into administrative remedy, or even through litigation. Moreover, domestic manufacturers' lack of concern over IPR often leaves them at a disadvantage when facing such claims. In the face of foreign IPR hegemony, a sense of grievance and even of nationalism emerged among some enterprises. As a result, the perception that multinational corporations are taking advantage of IPR to restrain unfairly their competitors

in China is gaining momentum among China's enterprises, intellectuals, and government agencies.

Take China's motorcycle manufacturers, who face strong foreign challenges in IPR cases, despite their dominance in the Southeast Asian market. Japanese motor companies have experienced a shrinking of their market share in China's motorcycle market.⁶ They attributed this decline to imitation products from China⁷ and as expected, took whatever action is permissible under the IPR framework. In 2003, Japan's Yamaha Motor Co. Ltd won an RMB900, 000 (US\$109, 000) court judgment against Tianjin Gangtian after accusing the Chinese company of producing and selling copies of its motorcycles. That was one of the largest settlements in a Chinese copyright infringement case. Tianjin Gangtian was also ordered to stop making motorcycles under Yamaha's name, and to apologize through local newspapers to Yamaha.

IPR claims may also be made against half-cooperator-half-competitors in China. The IPR dispute between 'New Oriental School' and Educational Testing Services (ETS) is such an example. This copyright dispute erupted as early as 1996. The ETS complained to China's concerned departments that the New Oriental School, a successful English Training Centre, illegally used copyright exam materials. After the latter sincerely apologized, ETS offered limited cooperation by legally authorizing New Oriental School to use its TOEFL exam materials. However, the ETS was unhappy with New Oriental School for repeated copyright infringement in the years that followed and thus deferred any decision regarding authorization of New Oriental School to use its GRE exam materials. To the dismay of ETS, New Oriental School was found to be using, copying, and selling ETS's copyright GRE exam materials without permission. In 2002, the impatient ETS filed a lawsuit against the New Oriental School for damages of RMB30 million. In September 2003, New Oriental School was ordered by No. 1 Intermediate People's Court to compensate ETS and the Graduate Management Admission Commission to the value of RMB10 million and to surrender all the infringing materials to the Court for destruction.

The lawsuit was given wide media coverage and was interpreted as being intended to penalize China's students. ETS had to release a statement which said that it

6 Honda's motorcycle sales last year in China dropped 27 per cent, whereas Yamaha's sales plunged 49 per cent, said an official with Honda's Beijing office.

7 The Japanese Ministry of Economy, Trade and Industry (METI) statistics indicate that China produces about 11 million motorcycles annually, 9 million of which are imitations of Japanese products. About 2 million of

the imitation motorcycles are exported to Asian nations, and some are sold with only the trade marks changed. A Chinese Ministry of Foreign Trade and Economic Co-operation (MOFTEC, later reorganized into the 'Ministry of Commerce') official commenting on Japan's statistics dismissed it as 'totally groundless'.

had initiated legal proceedings in an effort to protect its copyrights on its exam materials, which is also essential to the integrity of the examination system and the university admissions process. In no way is the lawsuit intended to penalize China's students but instead is an effort to protect them. Nor was this an attack targeted against New Oriental School or the websites. It was only the engagement of the rule of law to stop copyright infringement and piracy. ETS has always attached great importance to the protection of copyrights and the interests of copyright owners. As a result, ETS decided to address this copyright infringement problem through legal channels.⁸

Intriguingly, the two parties have continued to have some form of cooperation with each other even since the first copyright dispute arose. A reasonable explanation is economic benefit. The New Oriental School is not only a competitor but also a collaborator with ETS *vis-à-vis* International English Language Testing System (IELTS). The latter is therefore reluctant to abandon New Oriental School on account of its substantial influence and rich experience in administering TOEFL, GRE, and GMAT in China. As a partner, New Oriental School has successfully built up confidence among Chinese students, and applicant numbers for the exams increase each year. All these have practically extended ETS' market share in China. ETS surely has no intention of finishing New Oriental School off with a single blow, but rather seeks further control of it in order to achieve greater market share instead of being replaced by other adversaries such as the IELTS.⁹

Quite a few multinational corporations have filed patent applications with the SIPO. Reportedly more than 90 per cent of the patents in the telecommunications and semi-conductor industry, around 90 per cent in the biological industry, and some 70 per cent in pharmaceutical industry and computer industry are owned by foreign companies.¹⁰ Some multinational

corporations have even moved into the fields where China's enterprises are technologically advantaged, such as traditional Chinese medicines.¹¹ Some others tactically file surrounding patent applications to build up a patent barrier for a certain industry, which can effectively block Chinese enterprises from undertaking core business operations of the industry.¹²

In the meantime, multinational corporations have even filed lawsuits against the SIPO for failing to protect their perceived patents. It is noteworthy that not every measure that the multinational corporations have taken has been successful.¹³

In the view of some of China's enterprises, the IPR strategy that multinational corporations pursue in China takes various forms. In addition to the approaches mentioned above, the IPR strategy can also occur in disguised forms, among which is to undertake a joint effort with other companies to create a new standard with a shared IPR pool that can be licensed out or to create a technical standard.¹⁴ As the creator of the technical standard of the core business operations of an industry, a multinational corporation is in a unique position either to force an enterprise in China to use the standard to the advantage of, *inter alia*, the multinational corporation or to dictate the terms of cooperation between it and the Chinese enterprise. By seeking IPR-backed opportunities in the China market, certain multinational corporations have already turned the exploitation of technical standards into a lucrative revenue stream.

Moreover, for some of China's competitors, the timing when multinational corporations take measures to assert their IPR in China reveals suspicious motives of the multinational corporations in the eyes of some of their Chinese competitors. For them, their foreign competitors tend to take IPR-related measures after an IPR regime of higher standard has been in place in the target country and at a time when the measure to be

8 ETS Statement Concerning Copyright Violations by New Oriental School and Various Websites, 2001.

9 *People's Daily* 7 June 2002.

10 21st Century Economic Report, 21 November 2002.

11 Non-Chinese firms obtained nearly 1000 patents for traditional Chinese medicines before China's enterprises have even filed patent applications.

12 The Citi Group filed 19 patent applications to the SIPO on new business methods of banking and financial products up to 2002. If it succeeds, then China's banks, which have obtained only 11 patents—irrelevant to new financial innovation—all together by 2002, will have difficulty employing these new methods. Cite *Electronics Intellectual Property*, December 2003, p. 25.

13 For example, Japan's Honda Motor Co. Ltd was awarded an invention patent and an industrial design patent for a new model of mini motorcycle in 1994. In 1997, 1999, and 2000 Honda petitioned the Shanghai IPO, Zhejiang IPO, and Henan IPO, respectively, to stop the infringement by three Chinese motorcycle companies, ie Shanghai Feiling

Motorcycle Co., Zhejiang Huari Co., and Henan Xinxiang Motorcycle Co. Upon the challenge by the three Chinese companies, the SIPO's Patent Re-examination Board re-examined the patents and announced in September 2001 that Honda's patent on the invention was asserted, but that its patent on the industrial design was invalid because a patent had already been issued for a similar design. On 25 July 2002, Honda filed a petition through the courts to have the invention patent reconfirmed, arguing that the SIPO wrongfully rescinded the patent. On 25 September 2002, Beijing No 1 Intermediate People's Court dismissed the case against Honda.

14 Qualcomm, the US company that pioneered Code Division Multiple Access (CDMA) technology, which has been used in wireless networks and handsets in China, is the creator of the technical standards in this field. Thus all China's telecommunications companies intending to apply the technology must cooperate with Qualcomm on the terms and conditions dictated by the latter.

taken will cause serious damage to the competitors or even force them into a corner.¹⁵

With the IPR strategy of multinational corporations in place, China's enterprises now incur considerable costs, in time and money, determining how to do research without infringing other companies' patent rights.¹⁶ This gives rise to the question of whether the substantial costs involved in patent searching, analysis, and litigation are a necessary price to pay for the incentives offered by China's new patent system, or whether ways can be found to reduce them. The IPR strategy of the multinational corporations has, however, served to prompt China's competitors to change how they develop their products.

The perception of some of China's enterprises, intellectuals, and government officials that multinational corporations have taken advantage of their IPR to squeeze the market share of China's companies has something to do with the fact that there is no clearly defined competition law. Accordingly, it is difficult to differentiate between a monopolistic act and an act of IPR self-protection.

The pressure for domestic enterprises to resort to an IPR strategy not only comes from abroad but also from within China, as domestic competition intensifies. However, it is fair to say that IPR-based competition from the multinational corporations is the primary motivating factor behind the move to embrace an IPR strategy in China.

Inspiration from IPR Strategies from USA and Japan

The USA and Japan are pursuing an IPR strategy in their economic restructuring and particularly in its foreign trade relations. The US Patent and Trademark Office (USPTO) adopted the 21st Century Strategic Plan in 2002 (revised in February 2003). The five-year Strategic Plan is basically a self-enabling plan, with the aim of transforming the USPTO into 'a

quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system'.

In July 2003, the Intellectual Property Strategy Programme was formally implemented in Japan.¹⁷ Compared with the US strategy, Japan's IPR strategy is more comprehensive, covering not only capacity-building on the part of the government IPR agency but also the policy priorities towards IPR-oriented innovations and their application. The Japanese strategy aims to make Japan 'a Nation Built on Intellectual Property'. In other words, its objective is to enhance Japan's international competitiveness.

While the US strategy focuses on improving the efficiency of patenting and trademarking, Japan's strategy covers the whole cycle of intellectual creation: the creation, the protection, and the exploitation of IPR. It even extends to the obligations of the central government, of the Prefectures, of the cities, of the universities, and of the enterprises. As part of the Strategy, Japan is stepping up measures to counter counterfeiting globally.¹⁸

Both the USA and Japan are well ahead of China in terms of the level of innovation. Their pursuit of an IPR strategy not only serves as a warning but also as a source of inspiration to China's innovation drive.

In this regard, a report of the UK's Commission on Intellectual Property Rights (CIPR) has special impact on China's decision to embrace an IPR strategy. As the title 'Integrating Intellectual Property Rights and Development Policy' reveals, the Report of the CIPR in September 2002 is development oriented. The report can be seen as advocating an IPR strategy, of which the primary purpose is to explore 'how national IPR regimes could be best designed to benefit developing countries within the international agreements, including the TRIPS', thus distinguishing the strategies of both the USA and Japan.

15 For example, the DVD 6C Licensing Agency, representing the six leading developers of DVD technology and formats—Hitachi, Ltd, Matsushita Electric Industrial Co., Ltd, Mitsubishi Electric Corporation, Time Warner Inc., Toshiba Corporation, and Victor Company of Japan, Ltd (JVC)—took no countermeasures in the face of what was later called piracy on the part of Chinese DVD manufacturers until 2002 when China had put in place an IPR regime of high standard in its effort to comply with the WTO commitments and when China had begun exporting DVD players. In 2002, the DVD 6C Licensing Agency launched a comprehensive attack against Chinese manufacturers of DVD players. Among other things, they petitioned the EU customs to detain DVD players of Chinese origin on the ground of suspected IPR infringement and forced Chinese manufacturers to agree to become licensed under the DVD 6C patents on or before 30 June 2002 and to pay royalty for DVD-Video players for the use of end-users in China at a standard rate of 4% of the net selling price of the player, or US\$4.00 per player, whichever is greater. China's manufacturers thought the multinational corporations

behind the DVD 6C Licensing Agency were taking the measures only to stop their China counterparts from exporting.

16 An example is that a well-established research institute spent 4 years and CNY25 million on a project which turned out to have repeated what had been done by a multinational corporation, in that the international company technology had patented the technology (W Jingchuan, interviewed by China News Agency on 13 January 2004).

17 In February 2002, Prime Minister Koizumi made a policy statement. In March 2002, the Strategic Council on Intellectual Property was established, which published in July 2002 the Intellectual Property Policy Outline. The Basic Law of Intellectual Property was passed in November 2002. In March 2003, the Intellectual Property Strategy Headquarters were established, comprising all the ministers and 10 experts led by the Prime Minister as the Chairman.

18 I Nakayama, Intellectual Property Strategy in Japan, OECD, IPR, Innovation and Economic Performance, 29 August 2003.

Growing IPR awareness in China

IPR awareness in China is growing in part as a result of nurturing.¹⁹ IPR awareness not only relates to the legal consciousness of IPR but also to the importance of IPR strategy in global competition. Although China's competitiveness in the field of IPR lags far behind developed countries, some of China's enterprises are becoming aware that only self-owned IPR can empower them in their competition with multinational corporations equipped with technological advantages. Some of China's companies have even taken measures to secure international innovation resources, while others have begun forging a strategic cooperation in innovation activities.²⁰

All the above factors contribute to a sense of urgency of embracing an IPR strategy in China.

2. What is the Chinese IPR strategy about?

The Guidelines of the State Intellectual Property Rights Strategy outline the key elements of the state IPR strategy.

First, the issue of IPR is dealt with from 'the height of a national strategy'. In other words, the IPR strategy is part of the national development strategy.

Secondly, the IPR strategy is to consummate IPR legislation in China in the next 5–10 years with an emphasis on the enforcement of IPR. Improving IPR-related policies, laws, and regulations is made part of the strategy.²¹

Thirdly, the IPR strategy aims to increase the number of patents in China, to match other major global economies, and to study and implement the IPR strategy in selected fields.

Fourthly, the strategy endorses the switch of innovation mentality from the imitation-oriented approach to self-dependent IPR-oriented one. Many Chinese enterprises have relied on imitation of imported products and equipments for the technology acquisition. The government reportedly plans to invest RMB20 billion to focus on innovation in 12 selected important areas, aimed at achieving 2000 patents during the 'Eleventh Five Year Plan' period.

Lastly, the strategy encourages an active participation in the adjustment of international rules on IPR. Genetic resources, traditional knowledge, and folk

literature and art should also be put under IPR protection.

The strategy is supplemented by IPR tactics such as the setting of technical standards. For example, the Standardization Administration of China (SAC) approved early in May 2003 the Chinese WLAN standard, which came into effect on 1 December 2003, although a transition period has been initially granted that extend the compliance deadline for some WLAN products until 1 June 2004 and its implementation was later postponed 'for an unlimited period' under tremendous pressure from the US side.²² On account of this standard, equipment vendors that want to sell WLAN gear in China are required to offer products based on the Chinese standard. To conform to this standard, foreign equipment vendors must license WAPI through a manufacturing agreement with 1 of 11 Chinese companies designated by the government, including Legend Group Ltd and Huawei Technologies Co. Ltd. The Chinese companies—many of which compete against foreign equipment vendors—are not under any obligation to license WLAN to foreign companies, who could find themselves locked out of China's WLAN market if they cannot reach an agreement with a local partner. While China's companies that get WAPI licensed may demand detailed access to foreign companies' products and technologies, raising concerns about the protection of IPR, the implementation of the Chinese WLAN standard, and its licensing requirements would fundamentally change a market that had previously been open to foreign equipment vendors by creating a new barrier to trade. The requirement has also triggered worries among multinational corporations that could undermine efforts to create a global standard for wireless networks.

3. Where do Chinese enterprises feature in the state IPR strategy?

Case study 1: Huawei's mischievous acquisition of technology pool

Huawei, a leading company in the field of information technology, is widely seen as the vanguard of Chinese IT industry. In January 2003, US network equipment giant Cisco Systems filed an IPR lawsuit against Huawei Technologies accusing the Chinese rival of copying its operating software and infringing its

19 Public IPR awareness in China has been primarily nurtured through public education via mass media.

20 China Electronics Company (CEC) acquired the mobile phone R&D centre of Philips in France in 2002. TCL, another electronics giant,

collaborated with Philips on R&D activities on a new kind of DVD players.

21 *People's Daily* 10 March 2003.

22 *People's Daily* 7 April 2004 and 22 April 2004.

patents.²³ Through a Texas court, Cisco sought a permanent injunction to stop Huawei distributing versions of its Quidway routers and servers. Market analysts have speculated for some time that Cisco would take the case to law because of the similarity between Huawei's products and their own. Chinese market analysts, however, see the move as a more cynical protection strategy aimed at defending Cisco's global markets. Huawei is offering similar products at lower prices in overseas markets where Cisco has enjoyed market dominance. The lawsuit is therefore seen in China as a recognition of how far Huawei has come to constitute a real threat to Cisco. According to the latest market statistics, Huawei appears to be stealing some of Cisco's thunder. Huawei has reportedly captured 13 per cent of the global market for next-generation voice products, with over 4 million ports shipped to date.

Cisco claimed that portions of Huawei's source code are so similar to its own that even text strings, file names, and bugs are identical. Cisco also accused Huawei of infringing at least five of its patents related to proprietary routing protocols.

After months of denying any wrongdoing, Huawei admitted in late March that an employee had copied 2 per cent of the router operating software from Cisco but insisted that the company did not know of the violation. In June, a federal judge for the Eastern District of Texas issued a preliminary injunction, barring Huawei from selling products that incorporated the patent in dispute.

Cisco recently halted the suit pending an independent review of Huawei products, after Huawei said that it had changed its source code.

Now Huawei is back on the offensive, teaming up with Microsoft in China, where the two firms will sell an integrated package of next-generation network equipment from Huawei coupled with Microsoft's Exchange Server 2003. Dubbed U-SYS WorkSpace, the offering is aimed at carriers looking to offer IP Centrex and other hosted IP services like Microsoft Exchange. This is a very deliberate strategy to buy legitimacy in the Western market. In addition to the Microsoft deal, Huawei has struck a commercial arrangement with 3Com Corp. Immediately after the Texas judge's June injunction, which covered only a narrow range of products, 3Com filed a motion to intervene, petitioning the court to declare that products produced by the joint venture between itself and Huawei did not infringe Cisco's patents.

Case study 2: from DVD to EVD: DVD manufacturers' collective action

China makes up to roughly 70 per cent of home DVD players in the world market, which reached the peak of over 30 million sets in 2002. However, in the same year, China's DVD manufacturers encountered a crisis overshadowing the prospect of the prospering industry. The IPR holders, represented by 3C DVD Licensing Group comprising multinational corporations such as Philips, Sony, and Pioneer, claimed from Chinese manufacturers royalties that accounted for a sizable portion of their profits. The harsh attitude of the IPR holders left no doubt that they were employing the IPR strategy to corner their Chinese counterparts. It occurred to China's DVD manufacturers, who were heavily dependent on the multinational corporations, that they had no choice other than to develop their own patented technology to compete with the multinational corporations, for by owning industry standard technology they can not only avoid increasing licensing fees but also license to and collect royalties from others.

As early as 1999, China began to develop its own format for video player products, which was later called EVD (Enhanced Versatile Disc). However, it was after the DVD 'patent mania' of 2002 that the EVD standard acquired stronger government support in its drive to reduce licence fee payments and shake off dependence on foreign technologies in production.

According to the company developing EVD, Beijing E-World Digital Technology that comprises government bodies and 10 domestic electronics manufacturers, the new format promises five times the image quality of DVD movies and a higher computer data-storage capacity. However, the EVD standard seems to be quite costly: it will be playable only on EVD players, which will cost about US\$240, compared with around US\$85 for the average cost of a domestic DVD player. It does not appear to be a user-recordable format for now, and aims to complement the DVD movie format for those with high-definition TVs. Prospective EVD manufacturers will have to rely on film distributors to introduce content on EVD. Moreover, competitors outside China have developed similar high-capacity optical disc formats in order to push DVD technology forward. Japanese electronics giants Toshiba and NEC, for example, have had their next-generation DVD standard approved by the DVD Forum, an international

23 For an elaboration of *Cisco v Huawei*, see S Li, 'The Business Game between Huawei and Cisco' in S Li (ed.) *The Dispute between Huawei and Cisco* (China Yanshi Press Beijing 2003), 89–105.

association of electronics makers and movie studios, just weeks after China clarified its own EVD format.

EVD will meet a huge market challenge, although the EVD developer claimed that it would represent the new industry standard. It has thus been proposed that to help the developer of the EVD standard, the government should adopt the EVD standard as a compulsory standard, so that the multinational corporations including the manufacturers and film distributors have to adapt to this standard in order to tap the Chinese market.

In the current international DVD market, the competition for technology standards has been far more severe than the competition for sales.²⁴ In the attempt to evolve from DVD player manufacturers to EVD standard setters, Chinese DVD manufacturers have clearly shown that they are not content with being a major manufacturer; they will not only compete on prices, but have also start competing over DVD technology standards.

Case study 3: Motorcycle manufacturers in Chongqing: from imitation to patent creation

China now possesses the world's largest motorcycle manufacturing industry, with an annual production scale in the vicinity of 12 million units and exports of 2.9 million units. However, China's motorcycle makers are known for being quick to imitate²⁵ and therefore are often accused of infringing foreign motorcycle manufacturers' industrial designs and trade marks.²⁶

China's motorcycle manufacturers are being urged to develop new technologies and products with independent IPR to ensure they survive cut-throat international competition from multinational corporations.

Chongqing is China's major motorcycle manufacturing base, hosting big producers such as Zongshen, Lifan, and Jialing. Chongqing has been a major target of an IPR offensive by Japanese motorcycle manufacturers. The motorcycle manufacturers' response to the IPR strategy is quite illustrative of that of the motorcycle industry in China as a whole.

Zongshen filed 72 patents in 2001, but this number increased dramatically to 176 in 2002, a rise of 144 per cent.²⁷

Realizing that domestic manufacturers must end their strategies of 'cloning' and 'duplicating' motorcycles if they are going to beat international firms under the WTO's rules, Jialing Group has invested 4 per cent of total sales on technology innovation and its new product sales account for 39 per cent of this company's total sales in 2002.²⁸

Lifan Industrial Group established an IPR department in October 2002. It has developed more than 110 motorcycle engine types, 527 motorcycle disc catalogues, 109 patents, 30 copyrights, and 45 registered brands, thus positioning Lifan in the leading position in the motorcycle industry of the country.²⁹

The move of the motorcycle manufacturers in Chongqing towards more IPR ownership exhibits the new IPR strategy of China's motorcycle industry.

4. What does the IPR Strategy imply?

Adopting an IPR strategy implies that China is willing to draw lessons from the experience of other countries and to benefit from the expertise of international organizations and international firms in improving IPR policy and IPR management in an open and increasingly globalized economy. It is known that the strategy will take account of US and Japanese IPR practices.³⁰

Embracing the IPR strategy also means that China needs to review the current or envisaged IPR reforms in this country, and assist in the development of institutional, legal, and regulatory IPR frameworks, including those related to the enhancement of IPR protection that are required for China to meet the challenges and opportunities following the WTO entry.

It was made clear from the outset that the strategy would also be compatible with the TRIPS Agreement.³¹ For multinational corporations, however, the IPR strategy is not free from worries. For example, the strategy will require governments at various levels to offer preferential policies to encourage inventors to set up small- and medium-sized high-tech enterprises based on their patents, and therefore may be discriminatory to foreign companies. Like other IPR strategies in other countries, the Chinese IPR strategy, to the

24 *Beijing Youth Daily* 19 April 2003.

25 A Japanese Ministry of Economy, Trade and Industry statistics reportedly highlights that of about 11 million motorcycles annually produced in China, 9 million are imitations of Japanese products.

26 *China Daily* 7 September 2002.

27 China Intellectual Property Rights 26 February 2003.

28 *China Daily* 7 September 2002.

29 Available at <http://www.lifan.com.cn/lifan/history>.

30 W Jingchuan revealed this in his remarks at the 2003 Intellectual Property Strategy and Enterprises' Key Competitiveness Forum, Shanghai. *China Daily*, 11 November 2003.

31 *ibid*.

extremist, could be tantamount to creating trade barriers. In fact, the US accused China's move to institute a Chinese WLAN standard of creating 'a dangerous precedent for using standards as a barrier to

international trade',³² which is employed as a tactic of the IPR strategy.

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32 According to the US Trade Representative, 'China's mandatory new encryption standard for wireless networking products would make China the only WTO member to introduce such a mandate for consumer products—a restriction compounded by granting domestic companies exclusive control over the technology'. There, in a letter of March 2004

addressed to the Chinese government, three senior US officials, ie Secretary of Commerce Donald Evans, Secretary of State Collin Powell, and US Trade Representative Robert Zoellick, reportedly expressed the concern. See http://www.inforworld.com/article/04/03/05/Hnusoppoeswlan_1.html.