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Lund University
Centre for East and South-East Asian Studies
Master Programme in Asian Studies
China Track
Fall Semester, 2006

**DEVELOPMENT AND ACHIEVEMENTS OF CHINA'S
INTELLECTUAL PROPERTY PROTECTION
UNDER GLOBALIZATION**

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Acknowledgments

I would like to take this opportunity to extend my sincere appreciation to the following institutions and people:

I would like to thank the Centre for East and South-East Asian Studies, Lund University and the Nordic Centre, Fudan University. I am thankful for the assistance I got from my supervisor, Kristina Jönsson, for her professional and kind guidance, and my co-supervisor, Professor Wang Jun, from Fudan University in Shanghai during my master thesis preparation and writing.

I am grateful for the timely help and encourage from the Programme Administrator of Asian Studies, Marina from Lund University.

Thanks my dearest husband, Zhong Sheng and my parents for their endless love. Their love and support will live in my mind deeply forever.

Dijon, France

May 2007

Acronyms and Abbreviations

AIPPI, International Association for the Protection of Industrial Property

BSA, Business Software Alliance

CPO, Patent Office of the People's Republic of China

CTO, Trademark Office of the People's Republic of China

ETFS, Enforcement Task Forces

FDI, Foreign Direct Investment

IP, Intellectual Property

IPP, Intellectual Property Protection

IB, International Business

IIPA, International Intellectual Property Alliance

IACC, International Anti-Counterfeiting Coalition

IPC, International Classification of Patent

NCA, National Copyright Administration of China

PCT, Patent Cooperation Treaty

PWL, Priority Watch List

RMB, Chinese Currency Unit

TRIPS, Agreement on Trade Related Aspects of Intellectual Property Rights

SIPO, State Intellectual Property Office of the People's Republic of China

UNESCO, United Nations Educational, Scientific, and Cultural Organization

USTR, US Trade Representatives

WIPO, World Intellectual Property Organization

WCT, WIPO Copyright Treaty

WPPT, WIPO Performances and Phonograms Treaty

WTO, World Trade Organization

Abstract

With China's open door policy in the late of 1978 and accession to the World Trade Organization in 2001, the progress of globalization has accelerated the comprehensive development of China's society, in which the progress of intellectual property protection just is a typical example, because the reform and evolution of intellectual property protection not only reflects the China's development of political and economic society but also reflects the development of the relationships between china and other countries and international organizations.

This paper tries to detailedly display a series of important historical affairs, representative data in terms of intellectual property protection from legislation to enforcement, and the developmental process in the progress of globalization in order to prove that China has procured significant development and achievements on intellectual property protection under globalization since 1978 by the efforts of all Chinese, the lead of China's government and the pressure and aidance from some advanced countries and international organizations. While discussing the above topic, the paper also suggests some possible measures based on the analysis of current problems about intellectual property protection in China.

Key Words: Globalization, China, Intellectual Property, Intellectual Property Protection Patents, Copyrights, Trademarks, Counterfeit, Pirate.

1. Introduction

1.1 Backgrounds and Research Problem

Over the past 15 years, intellectual property (IP) have moved from an arcane area of legal analysis and a policy backwater to the forefront of global economic policymaking under globalization.¹ In international communities, IP not only is considered as an increasingly important dimension in international business (IB) especially from 1995 when the World Trade Organization (WTO) directly integrated IP into IB,² but also is considered as the potential impacts on foreign direct investment (FDI), technology transfer, and pricing under enhanced market power. In 1986, the introduction of IP as one of the trade disciplines subject to negotiation in the Uruguay Round of multilateral trade negotiations, and then in 1994, WTO adopted the Agreement in Trade-Related Aspects of Intellectual Property Rights (TRIPS), which dictated to states how they should regulate the intellectual property protection (IPP), and enhanced the visibility of the role of IP in the process of globalization, as well as politicized the role.³ Recently, more and more countries has considered IP as a long strategy of political and economical development, because IP may not only promote the evolution of domestic technology, but also enhance a country's ability of competition in the progress of globalization.

Under much pressure from some developed countries, international organizations and the demands of domestically economic development, increasing measures in IPP has been enforced by China's government, such as enforcement in software, semiconductors, and telecom equipment-businesses in which Chinese spending of research and development is rising rapidly since 1990s. In addition, the domestic demands in terms of IPP have grown generally with the dramatically economic development. In recent years, IP has also been a hot topic in the Chinese media, and the public has gained a stronger understanding of the involved issues. The country's increasingly aggressive advertising industry has also boosted public awareness, and consumers are becoming more and more brand conscious. Furthermore, China's government is trying to improve the relationships with some western developed countries and international organizations by discussing actively some related problems

1. Keith E Maskus, "Intellectual Property Rights in the Global Economy", P1
2. Yang, D.; Clarke, P. 2005, "Globalisation and intellectual property in China", P 1
3. Gurry Francis; Debora Halbert, 2005, P1

about IPP with them. In some sense, the reform of IPP system certainly reflects the China's development of political and economic society.

So, I intent to review some important historical affairs, show some representative data in terms of IPP including legislation, administration, judicature and enforcement, and the developmental process in the progress of globalization, in order to prove that China has procured significant development and achievements in terms of IPP under globalization since 1978 by the efforts of all Chinese, the lead of China's government and the aidance of some advanced countries and international organizations. Although a great deal of effort has been made to improve IPP in China and these labors have to some extent been successful, the IP infringement problem is still very serious, and China's government and citizens need pay more attention on IPP.

1.2 Methodology and Materials

Obviously, I chose China as my case in this paper. Why chose China as the area of my research? China has generally become the biggest market of investment and consumption in the world and has pursued a policy of expanded participation in the world political economy since it began to implement the reform and open door policy and embraced foreign investment in the late of 1970s and entered in the WTO in 2001. The reforms that followed sustained the growth in GDP per capita from 1980 to 2000. According to the economic development and the progress of globalization, a lot of laws was promulgated, many of which are related to FDI and international technology transfer. By 1999, China had enacted almost 400 laws and decisions on legal issue as well as over 700 regulations and nearly 4000 administrative rules,⁴ however, counterfeiting and piracy are very much 'live' issues in China. According to some estimates, as much as one-third of the economy is dependent on counterfeit goods,⁵ such as counterfeit food, drink, and healthcare products, some of which have led to poisoning and illness. Moreover, unlike most industrialized countries where legal systems have been long established to guide economy activities, in China the legal system, including IP system and economy are developing in parallel. In addition, as one of the biggest developing countries, China is also a vivid example to understand how to ameliorate the IPP in developing countries. So it is significant to choose China as the area of my research.

4. Zhang, 1999

5. Kirkpatrick David, "China won't protect IP until it gets its own IT", Fortune. New York: Jun 27, 2005. Vol.151, Iss. 13; pg. 50, 1 pgs

In the beginning of this paper, I definitely pointed out that I tried to prove China's IPP had procured notable development and achievements under globalization since 1978, and then I would review some importantly historical affairs and show some representative data in terms of IPP from legislation, administration, judicature to enforcement in order to display and discuss those significant achievements. As Babbie thought, "Deductive reasoning refers to a logical process of developing specific predictions (hypotheses) from general principles. This type of reasoning moves from the general to the particular."⁶ So the most primary methodology applied in this paper would be deductive reasoning.

To explain and analyze the above problem, I did two questionnaires and designed different questions for IP's professionals and normal Chinese citizens, and I had interviews in two China's cities during my fieldwork, Shanghai and Kunming from September to November. I had interviews with 12 persons respectively who are special in IP with different background, including judges, attorneys, professors and counselor-at-law of private enterprises and I had 25 semi-structured interviews with normal Chinese citizens respectively at some public place, such as universities, supermarkets, office buildings, factories and restaurants. Whereas, gathered information from normal Chinese citizens showed that there were more than 70% of normal citizens only considered IPP as punishing those persons who produced or sell pirate software, CDs, DVDs and books, and counterfeit products of well-known brand, most of them had not much knowledge about the development of IP's Legislation and judicature; On the other hand, those points of views from these respondents who are special in IP were very similar which almost came from authoritative paper, reports and so on, although their opinions were professional and profound. I do not think these data is more useful than authoritative paper to persuade readers. Therefore, I finally chose to use directly books, journals, news, papers and government documents for quantitative/explanatory analysis instead of qualitative analysis from interviews and questionnaires.

According to my research, materials and Data that I need were related to globalisation and China's IPP, the development of IP system in China, the current situation of China's IPP, international communities' views for China's IPP and so on. Main materials that I chose were Lina Wang, 2004, "Intellectual property protection in

6. Babbie 2002

China”; Yang, D. Clarke, P., 2005, “Globalisation and intellectual property in China”; Liu Chuntian, 1998, “*The Evolution of the Intellectual Property Protection System of China in Last Two Decades of Years*”; Zizhen Bian, 1996, “Intellectual Property Protection in China”; Francis Gurry; Debora Halbert, 2005, “Globalization, Development, and Intellectual Property: New Challenges and New Opportunities” , and the English version of some China’s current IP laws, rules, regulations and explanation, such as Detailed Rules for the Implementation of the Trademark (1988), Patent Law of the People’s Republic of China (1984), Provisional Provisions on Patent Agencies (1985), Provisional Measures for the Administration of the Reproduction of Trademark (1985), Patent Law of the People’s Republic of China (1992). I collected them mainly from the library and Elin of Lund University; data that I gathered mainly from a few official website such as WIPO and the State Intellectual Property Office of People’s Republic of China (SIPO).

1.3 Disposition of The Research

With the above aim in mind, this paper was divided into five parts. Firstly, the “introduction” described the reason why I did the research, some information about my preparing before writing this paper and the arrangement on the structure and content of this paper; in the second part, some important background knowledge about IP and globalization on theory will be displayed; thereafter, the third part, the core part of this paper would pay a particular attention to show and analysis those notable development and achievements China procured on IPP from 1978 to 2006, and would be divided into three sections according to three different period of the evolution of China’s IPP. The first section would show that the development on Protecting Patents, Trademarks and Copyrights respectively from 1978 to 1989, the second section would describe the rapid growth of IPP system from 1990 to 1994 and would specially analyze the Sino-US negotiation and the establish of IP Trial Chambers, the last section would discuss some further development on China’s IPP system in administration, legislation, judicature, enforcement and public popularization, and would quote many related data between 1995 and 2006; subsequently, some current and intractable problems, and some related suggestions would be illuminated in the fourth part; in the conclusion, the mainly situation about China’s IPP system would be summarized and my standpoint would be explicitly emphasized again.

2. Theory Review

In order to emphasize the significance of my topic and research, the part would analyze the meanings of IP and globalization, the IP's growth under globalization and the important function and status of IP in the process of globalization and the development of global economy by displaying some important background knowledge about IP and globalization on theory.

2.1 The Definition of Intellectual Property and Globalization

a) Intellectual Property

" 'Intellectual property' shall include the rights relating to: literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."⁷ In addition, The U.S. legal system developed the concept of intellectual property to encourage the creation of valuable ideas and protect them from being stolen. In law, particularly in common law jurisdictions, IP refers to a legal authorization, which sometimes attaches to the expressed form of an idea, or to some other abstract subject matter. In general terms this legal authorization sometimes enables its holder to exercise exclusive control over the use of the IP, and the legally protected rights given to people over their intellectual creations in the scientific, industrial, artistic and literary fields, under which the owner has the exclusive right of the creation for a certain period of time and any exploitation must be under the consent of the owner.⁸

Generally speaking, IP, namely patents, copyrights, and trademarks, reflects the intangible product of the mind or the intellect, and that once established; such authorizations are generally treated as equivalent to physical property and may be enforced as such by the courts.⁹ Patents protect technology; copyrights protects literature, music, arts, maps, and technical drawings, and motion pictures, such as best-sellers, hits, box-office successes, and the recordings and performances of the stars

7. The Convention Establishing the World Intellectual Property Organization, July 14, 1967, Article 2, section (viii), done at Stockholm.

8. WIPO, 1997b: P3

9. From http://books.google.com/books?id=IzPHx_DRqX8C&dq=Globalization+and+Intellectual+Property

of pop and classic;¹⁰ trademarks protect legal marks that identify the products of a firm and distinguishes them from those of their counterparts in the same industry. Obvious examples are those mark recognizable by the global consumer, such as Coca-Cola drink, Cucci suit, Lee jeans.¹¹

b) Globalization

The International Monetary Fund defines globalization as “the growing economic interdependence of countries worldwide through increasing volume and variety of cross-border transactions in goods and services, free international capital flows, and more rapid and widespread diffusion of technology”. Meanwhile, The International Forum on Globalization defines it as “the present worldwide drive toward a globalized economic system dominated by supranational corporate trade and banking institutions that are not accountable to democratic processes or national governments.”¹² “Globalization, as influenced by neo-liberal economic policies, has become the new word for mainstream development. Globalism as development ideology implies the growth of a world market, increasingly penetrating and dominating ‘national’ economies.”¹³ Globalization, which is not the same as internationalization, as a process of social transformation, is creating an increasingly inseparably interdependent relation among societies all over the world on the basis of economic integration. As we known globalization brought the sharply rise of global economy, the spread of democratization, the technologies of globalized communications, the comprehensive intercommunion of different people and cultures, and the normatively highly charged activities of multilateral organizations and border-crossing NGOs; at the same time it also brought some negative influence including the rampancy of drug, the spread of terrorism, the deteriorating of inequality growth, and so forth. However, it is undeniable that globalization has become the phenomenon unequivocally pervading current times. The process of globalization in terms of economy, politics and culture not only have significantly influenced worldwide comprehensive development, but also is redefining the economic, social and cultural dynamics of contemporary societies.

10. Gurry Francis; Debora Halbert, 2005, P1

11. Yang, D.; Clarke, P, 2005, P 5

12. From <http://www.ifg.org/analysis.htm>

13. Desai V. & R. B. Potter, eds, P8

2.2 The development of Intellectual Property Under Globalization

Whether globalization is a real phenomenon, or only an analytical artifact (a myth), it is undeniable that the globalization of cross-border businesses has accelerated the international development of IP in the past two decades, interest in the protection of IP, including patents, copyrights, trade secret protections, and trademarks has increased, especially in the international arena. The globalization of trade entails that human beings have greater access to an array of goods and services never seen before in human history. From American movies and software to French wine, from Chinese clothing to German cars, human beings may be able to purchase a wide range of goods and services. So the IPP has also become more complicated than ever before. Under this circumstance, on the one hand, the formation of WTO and the collaboration between the WTO and other related IP organizations, such as WIPO and UNESCO (universal copyrights) to coordinate and assist member states in implementing their IP system. “Presently, the sustained IPP in most developed countries has been standardized by international organizations, such as the WTO and WIPO, and most developing countries are pushed rather than encouraged to conform to the standards of different types of IP-patent, utility model, industrial design, mark and copyright.”¹⁴ On the other hand some new forms of IP in the area of information technology and economic sector have surfaced, where the physical product is of related insignificance to the immaterial intellectual basis of the product or service; and some “new rights, such as the rental right and the right of communication to the public, were also added in the TRIPS Agreement and the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), in respect of works protected by copyright in an effort to respond to and accommodate the use of those works in the digital and networked environment.”¹⁵ For examples, “Beginning in the 1980’s the sui generis right in respect of the layout-designs of intergraded circuits was created at the national level in the United States and then emulated in other jurisdictions. A new sui generis right in respect of unfair extraction from databases, beyond existing copyright protection, was created within the European Union.”¹⁶

In recent years, with the global movement of financial capital, human resource, cultural

14. Yang, D.; Clarke, P. 2005 P 4

15. Gurry Francis; Debora Halbert, 2005, P2

16. Ibid

products and technology resource, one of the dramatic changes in IP is the gradually expanding scope of protection, for example, some controversy amongst scholars and nations have focused on the ethical issue of patent protection and drug access, the interests of small- and medium-sized enterprises in IPP, E-commerce, domain protection, and traditional knowledge and folklore.¹⁶ Other changes are that the rise of technology transfer, nation-to-nation IP activities and training, and cultural exchange and the integration of IP within international trade and FDI. These show that in the globalization process, IP is experiencing a significantly developmental period.

2.3 The Importance of Intellectual Property in The Development of Global Economy

Inevitable, with its attribute IP was, is and will be an important actor in the development of global economy. First, IP system is a creative and inventive stimulator; the creators are motivated for continuous intellectual creations owing to the financial rewards of their creations. Secondly, IP system makes it impossible the “knowledge” turning to the “profit”. Within the protective period, the creators have the incentive to disseminate their creations in the form of technology transfer, investment, and licensing. This encourages the application of new technology and knowledge through authorized exploitation, thus providing their creators with financial benefits. Thirdly, IP are limited in a sense that the protective periods are definite for the right holders. Such restricted rights prevent right holders from abusing their rights in the long run, and also allow society to fully and publicly exploit the creation for application and improvement when the legal protective duration is over. Fourthly, Firms are especially concerned about their IP assets because IP provides a competitive edge over rivals, for instance, these mark and trademark owned by different firms and companies are significant for consumers, manufacturers and authoritative organs. They allow consumers to identify their favorite brands from other similar products, and allow manufacturers to distinguish their products from their rivals, and allow examining bodies to differentiate quality and features.¹⁷ In particular, “ as markets opened and trade barriers were lowered, comparative advantage in the low-technology sectors would move to countries where labor costs were lower. High-technology countries would look to IP to protect employment and industries through the conceptual input to production.”¹⁹ Last but not

17. From WIPO website. [Http://www.wipo.org](http://www.wipo.org)

18. Yang, D.; Clarke, P. 2005, Pp1-5

19. Gurry Francis; Debora Halbert, 2005, P1

least, protecting IP is essential to the well and harmonious development of the global economy. Economic development accelerates the growth of the demand of invention and innovation. However development and innovation makes it much easier to copy those object that the IP system protects, such as pharmaceutical products, biotechnological inventions, operating software and theatrical films, while the costs of creative activities rise. Therefore, the well and harmonious development of the global economy need that IP system creates a good environment for fair competition.

3. Development and Achievements of China's IPP System

It is obvious to all that as one of the most important achievement of the open door policy, China's IPP has experienced unprecedented rapid development and procured significant achievements in the process of globalization. Globalization impacts the establishment and development of China's IP system direct and indirectly, while it accelerated the comprehensive evolution of China's society. In order to clear understand the development of China's IPP system, I divided the process of development into four phases from 1978 to 2006.

3.1 The First Phase- The Primary Constructing from 1978 to 1989

This section would analyze that the primary development of China's IPP system from 1978 to 1989, and show the achievements on protecting Patents, Trademarks and Copyrights respectively in the period.

3.1.1 The Summary of Developments in the First Phase

China entered into a new epoch for constructing socialistic modernization since December 1978. It is indispensable for constructing socialistic modernization to develop science, education and culture, to promote the creation and spread of IP, to promote the intercommunion of science, technology and culture with other countries. For these need, building the system of China's IPP became a necessarily historical task.²⁰ Before 1978, China's economy was centrally planned and there were almost no IP institutions besides the Trademark Control Act promulgated in April 1963 and a basic patent law based on Soviet legislation. "During the Cultural Revolution (1966-76), all IP laws and regulations were suspended as the country was thrown into turmoil."²¹

20. Liu Gao, 1998

21. Bian Zizhen, 1996, "Intellectual Property Protection in China", P1

With the dramatically growth of china's economy, the rapidly rise of the international activities and the entry of large numbers of FDI since 1978, the lack of the system of IP protection had become an evident obstacle on the way of the evolution of china's market economy. On the one hand, the lack of the IP system depressed the enthusiasm of Chinese citizen on invention, baffled the development of domestic science and technology, and slowed the process of transition of china's export from primary products to advanced products; on the other hand, the lack of the IP system the introduction of advanced technologies and FDI from developed countries, because "without proper and adequate protection, advanced countries would be very reluctant to transfer their technologies into China for fear of piracy and free exploitation of their achievements resulting from the costly R&D."²² It was obvious that a proper IP system became an urgent need for the well-ordered development of China's economy society to establish the IP system according with China's current situation under that circumstance.

Under these circumstances, China's government appointed observers to attend the WIPO convention held in Geneva in March 1979, established the State IP Office and became a member of WIPO respectively in Jan and March 1980. Thereafter, WIPO and some patent offices of Europe and America began to assist China to train professional operators of IP.²³ and China's government also dispatched frequently delegacies and researchers to developed countries, such as US, Britain, German, for communion, study advanced knowledge of IP and attending related meeting. The assistance and press of international community and the positive attitude and efforts of China gave birth to favorable effects to promote the development of China IP system. On the one hand, China's government ratified actively a series of international treaties, conventions and agreements, on the other hand, China's government drafted and promulgated a raft of IP laws based on these international treaties, conventions and agreements, and gradually established the base and framework of China's modern IPP system, with administrative and judicial organs to guide and administer IP activities, and resolve related IPP disputes although enforcement of IPP was not considered adequate in the 1980s.²⁴

22. Yang, D.; Clarke, P. 2005, P10

23. Ren Jianxin, 1998, "Introduction of Judicial System of Intellectual Property in China", P2

24. Yang, D.; Clarke, P. 2005, P10

3.1.2 The Development on Protecting Patents in The First Phase

China's government decided to construct the system of patent, and recognized the importance to establish the Patent Law according to China's situation because the conferring of patents is different from general clerical work, it need the warranty of the related law.²⁵ And then, China's government organized a workgroup which was special on the draft of the Patent Law in March 1979, and dispatched researchers to United States, Japan, Canada, France and WIPO for attending in advanced study on patent for the first time in August 1979. In addition, China established the China's branch of AIPPI in August 1982 and the branch was ratified by AIPPI in May 1983. AIPPI is a Non-governmental organization of IP professionals, academics and owners of IP, it plays an active role in the work that led to the successive revisions of the Paris Convention for the IP protection of 1883. After spending five years in researching and discussing, China's government publicized the first Patent Law based on the Paris Convention in March 1984, and became effective in April 1, 1985. The first Patent Law confirmed patent including invention, utility model, and industry design, accepted the three principles of the Paris Convention, namely civil treatment, priority and the independency of patent. On March 19, 1985, China entered the Paris Convention for the Protection of Industrial Property, in April 1986, China Patent Office and the Committee of Europe Patent Office held the first meeting in Beijing, China. And China entered the Integrated Circuits Treaty in May 1989.²⁶

3.1.3 The Development on Protecting Trademarks in The First Phase

With the reform of the economy system in China, the Trademark Control Act promulgated in 1963 cannot fit the need of economic development any more. China's government dispatched observers to attend the temporary committee conference convened by WIPO in Geneva, and began to draft the Trademark Law in 1979. Three years later, WIPO held the lectures on the Trademark Law in Beijing in May,²⁷ and the Trademark Law was published in August 1982.²⁸ The Trademark Law based on the related historical experience of China and advanced countries including the Madrid Convention, accorded with the current situation of China's economy development. The publish and implementing of the Trademark Law is the first step of China's legislation on IP, is the cornerstone of China's system of trademark protection.²⁹ In addition,

25. Tang Zongshun, 1998, "Draft of Patent Law of China"

26. Cai Xiaopeng, 1998, "Of Patent Law (1973-1998)"

27. Dong Baolin, 1998, "Of Trademark Law (1978-1997)"

28. Liu Peizhi, 1998, "Trademark and its Prosperity in the Course of the Reform and Opening to Outside World in China"

29. Ibid

WIPO and China's related departments held the international trademark colloquium in August 1984. And then, the leaders of China's related departments visited WIPO, Switzerland, Germany and British for researching the international sort of merchandise in June, and China entered the Madrid Agreement on the Registration of Marks in Oct in 1987.³⁰

3.1.4 The Development on Protecting Copyrights in The First Phase

China's State Council authorized State Copyright Office to draft the Copyright Law in 1979 when there had been more than 100 countries which established own Copyright Law and entered the Universal Copyright Convention. The next year, the delegacy of State Publish Office visited US and had meetings with the counterpart of US Copyright Office in May, and State Publish Office finished a draft of the Copyright Law in July, and then Chinese researchers on copyright visited British and Germany to study the legislation and the management of copyright in September. In June 1981, the director general of US Copyright Office lead five American experts on copyright to visit China, they gave lectures in Beijing and Shanghai, and discussed some questions about establishing the Copyright Law in China with Chinese research team on copyright; in September, China dispatched researchers to British and Germany for attending in training classes on copyright held by WIPO for the first time in August 1979. And then, WIPO held the first training class on copyright in Beijing China in May 1982, and UNESCO held the first training class on copyright in Shanghai in February 1984.³¹

From 1980 to 1985, the step of amending the draft of the Copyright Law was very slow, because the question about adjusting administration institution of copyright cannot be resolved until July 1985 when State Copyright Office was established.³² In addition, China's first Civil Law on General Procedure was publicized on April 12, 1986, and came into force in 1987, within it, copyright was confirmed by the form of law for the first time.³³ Furthermore China and the United States reached the Memorandum of Understanding on Enactment and Scope of Chinese Copyright Law in 1989.³⁴

30. Dong Baolin, 1998, "Of Trademark Law (1978-1997)"

31. Zhai Lifeng, 1998 "Of Copyright Law (1979-1998)"

32. Shen Rengan, 1998 "Enaction of Copyright Law"

33. Zhai Lifeng, 1998

34. Wang Lina, 2004 "Intellectual property protection in China", P4

It is clearly that the basic framework of China's IPP system had been constructed in the ten years between 1978 and 1989.

3.2 The second Phase-the rapid growth from 1990 to 1994

This section would describe the rapid growth of IPP system from 1990 to 1994 and will specially analyze the Sino-US negotiation and the establishment of IP Trial Chambers.

3.2.1 The Notable Achievements in the Second Phase

China's Patent Office declared that the fifth edition of International classification of Patent (IPC) was applied in all publications of China's Patent Office on January 1, 1990 to keep the same step with most Patent Office in the world;³⁵ on January 18, WIPO decided that the equipment of simultaneous interpretation of Chinese would be installed in the new office building of WIPO. The Copyright Law was promulgated finally after ten-year's discuss and modification in September 1990 and came into force in June 1991, which provided the legal base for China to realize the normalization of the international relations on copyright,³⁶ and then the Provisional Statute on the Protection of Computer Software came into force in Oct 1991.

China and the United States reached the Memorandum of Understanding on Intellectual Property Rights on January 17, 1992,³⁷ China entered the Universal Copyright Convention and became a member of the Berne Convention for the Protection of Literary and Artistic Works in July 1992, two months later, China's government promulgated the Regulations on the Enforcement of Universal Copyrights Convention.³⁸ In order to facilitate the level of IPP to further close to the international standard, China's government amended the Patent Law in some important facets and then promulgated the Amendatory Patent Law on September 4th 1992. The patent holders' rights were expanded, the extension of protection was enlarged, the patent would be conferred all invention in technical area including chemical and materia medica; the term of patent protection was prolonged from 15 to 20 years, the protective term of utility model and industrial design was prolonged from 5 to 10 years; and so on.³⁹

35. Cai Xiaopeng, 1998

36. Liu Gao, 1998

37. Zhai Lifeng., 1998

38. Wang Lina, 2004, P4

39. Ren Jianxin, 1998

On January 1, 1993, the Amendatory Patent Law were implemented, and the Amendatory Trademark Law was promulgated on February 23, which put service trademark into the scope of protection, strengthen the force to strike the action of Copyright Infringement, and further perfect the procedure of registered trademark, furthermore the Implementation Regulations on the Copyright Law, and in the same year, the Law Against Unfair Competition came into force.⁴⁰

On January 1, 1994, China became a member of the Patent Cooperation Treaty (PCT) and Chinese also became its formal work language,⁴¹ in June State Council published the White Book about China's IP,⁴² and then the Decision on Copyright Infringement Punishment, the Intellectual Property Protection Customs Regulation were passed,⁴³ and became a member of the Nice Convention during 1994. It is evident that the development of China's IP system was substantially influenced by WIPO with its treaties and conventions before 1995. Furthermore, the combination of administrative and judicial enforcement authorities showed the prominent function to enforce the IP laws provide a basic framework for IPP in China.⁴⁴

3.2.2 Sino-US Negotiation on IP

Most production with copyrights used by China was American production before 1995, so the mainly external relation on copyrights of China was the relation with America and America was the first country that pointed out the question about the copyright protection of China. It is unexaggerated that the Sino-US negotiation on IP played an important role to accelerate the evolution of China's IP system. Reviewing history, after China established diplomatic relations with the United States, China and US reached the Sino-US High Energy Physics Agreement in January 1979, some problems about IPP were mentioned in it. US pointed out these problems again during the negotiation on trade between China and US in March 1979, US requested that the both sides should protect IP according to the World Copyright Pact.⁴⁵ The negotiations reached stalemate because there was different situation about IP between China and US. "The US negotiators believed that IPP should be an integral part of bilateral agreements in science, technology and trade, as negotiators would be only allowed to sign an

40. Liu Chuntian, 1998

41. Cai Xiaopeng, 1998

42. Zhai Lifeng., 1998

43. Bian Zizhen, 1996, P1

44. Wang Lina, 2004, P4

45. Shen Rengan, 1998 "Enaction of Copyright Law"

agreement on the condition of adequate IPP required by the US president. In the meantime, the Chinese counterparts had little knowledge and experience of the IP clauses.”⁴⁶, but China and the United States reached the Agreement on Trade Relations on February 1, 1979 for the well development of the bilateral relations. Indeed, “the agreements also contributed a lot to China’s entry to the WTO and its amendments of intellectual property related laws and regulations”⁴⁷. With the coming into force of the Sino-US Agreement on Trade Relations in February 1980, China’s government accelerated the constituting of IP laws and the establish of the system of IPP, and procured obvious achievement, but US think that China’s existing IP law was inadequate to protect the American technologies and techniques for example, there was no the Copyright Law and no law to protect computer software, and listed China on the priority watch list (PWL) based on the ‘Special 301’ in 1991.

The US promulgated ‘Section 301’ and ‘Special 301’ under the Omnibus Trade and Competitiveness Act to authorize the US trade representatives (USTR) to file complaints from their citizens on any ‘unjustifiable, unreasonable or discriminatory’ practices in trade and investment before the TRIPS agreement was signed in 1994. According with the unilateral policy, the USTR in different countries receive complaints from enterprises and individuals based on which the USTR establishes PWL each year to monitor IP practice and to take unilateral actions on IP infringements.⁴⁸

Through seven rounds of heated negotiations between the two big powers, the Sino-US Memorandum of Understanding on IPR was signed in the eighth negotiations in Washington on Jan 17th 1992.⁴⁹ Under this agreement, China revised and promulgated a series of laws and regulations, ratified many IP related international treaties and conventions to implement the obligation and realize China’s promises. The Record Treaties went into effect in China on April 30, 1993, it indicated that all China’s promises in the Sino-US Memorandum of Understanding on IP were came true.

However, China appeared on the PWL again on June 30, 1994, because the US thought that China had not made adequate progress in the enforcement of IP protection and had not controlled effectively the infringement of IP, especially the pirate of copyright after

46. Yang, D.; Clarke, P. 2005, P9

47. Wang Lina, 2004, P4

48. Yang, D.; Clarke, P. 2005, P

49. Liu Gao, 1998

the MOU agreement in 1992.⁵⁰ The evolution of China's IP system would face to an austere challenge again.

3.2.3 The Establish of IP Trial Chambers

With the impulse of the pressure from the domestic and international, the enforcement of China's IPP also procured significant achievements. The establishment of the Special People's Court System was one of the most significant progresses in this period.

In order to heighten levels of IP judiciary protection, strengthen the power of IP judiciary protection, impel the development of IP's judicatory, ensure the oneness of executing the IP law, increases the efficiency and effectiveness of IP dispute resolutions, Intellectual Property Trial Chambers within the People's Courts were established and most judges in these specialized chambers have received in-depth training. In August 1993, special IP trial chambers were established in Higher and Intermediate People's Courts in Beijing in the same time, which uncover the prelude of professional trial of IP in China.⁵¹ Thereafter, special IP trial chambers were established in Higher People's Courts in Shanghai, Tianjin, Guangdong, Fujian, Jiangsu, Hainan, and Sichuan, as well as in Intermediate People's Courts of a number of cities. This type of IP trial chambers has also been established in the district courts of a certain number of cities. This is a signal showing that China's IP judiciary field was going down along the specialization road.⁵²

Evidently, the dramatically development of china's economy contributed to the rapid growth of IP system. China has become one of the fastest growing economies in the world since 1992 and the country's GDP grew by more than 12 percent in the same year. Meanwhile, the construction of China's IP system also entered the period of the rapid growth. On the one hand, China's government established and implemented quite a few IP laws and regulations to encourage more active inventions of creative works, to improve investment climate for both domestic and foreign investors and to better fulfill the obligations under entered international treaties and conventions; on the other hand, China's government actively communicated and cooperated with WIPO, UNESCO, and the IP departments of other countries to study the advanced knowledge and the

50. Duan Ruichun, Xie Guanbin, 1998

51. Cheng Yongshun, 1998

52. Wang Lina, 2004, P5

developmental current of IP, to entered into the realm of international IPP and heighten China's status in it.

3.3 The Third Phase- the Comprehensively New Development from 1995 to 2006

This section would discuss some further development on China's IPP system in administration, legislation, judicature, enforcement and public popularization, and would show concentrative some related data between 1995 and 2006 in order to understand the development and achievements of the phase more directly and easily.

With the deepening of globalization, the development of the world economy increasingly relied on the spread and use of knowledge, the role what IP played in the world economy became more and more important. China had also transformed itself in IP from a country with little knowledge and experience to one with an integrated system, and the whole nation had realized the important position of IP in economic growth after fifteen-year's study and practice. When the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement was signed in 1995, a new standard was injected into the realm of international IPP and international business. The unilateral threats have been strictly restricted under the World Trade Organization (WTO). TRIPS became the most important dimension on international trade and IP since 1995, because TRIPS was one of the major principles followed by the WTO members.⁵³ Therefore, China's government continued to legislate to perfect IPP system, revised a series of IP laws to prepare for the entry of the WTO, enhanced the popularization of IP knowledge and further strengthened the intercommunion and cooperation with international communities based on the new standard.

3.3.1 The Development on the legislation

China first promulgated and implemented the Rule on the IPP in Customs in Oct 1995, which signed that China began to establish the IPP system of frontier according with the principles and regulations of WTO.⁵⁴ Basing on the rule, Chinese Customs was authorized to protect IP relating to articles import into and export from China, including patents, trademarks and copyrights. An owner may record his or her rights with the relevant customs authorities.⁵⁵ "By 1999, China had enacted almost 400 laws and decisions on legal issues as well as over 700 regulations and nearly 4000 administrative

53. Yang, D.; Clarke, P. 2005, Pp5-10

54. State Council of P.R.C, 2005

55. Wang Lina, 2004, P5

rules.”⁵⁶ In 2000, China’s government revised the Customs Law and ensured the Customs’ function in the terms of IPP and promoted China’s customs to strictly enforce the laws and regulations and check the imports and exports of IP violating goods effectively. “Depending on the law, when the owners require the customs to protect the IPRs of their import and export goods, Customs should input all the file record materials into the Customs computer system. The information can reach every customs office nationwide in China and aid in the enforcement of IPR protection in China.”⁵⁷ In December 2003, China’s government promulgated the amendary Rule on the IPP in Customs, which strengthened the customs’ power to survey and deal with the counterfeit products, lightened the owners’ burden of requiring the customs’ protection. And then some related regulations and judiciary explanations were promulgated in 2004. These developments signed that the basic law system in the terms of customs’ IPP was set up. Furthermore, State council set up the special workgroup for researching the stratagem of China’s IP in July 2005.

China’s government ratified the Budapest Treaty and the Madrid Agreement Concerning International Registration of marks respectively on July 1 and 21, 1995, signed the IPP Agreement with the European Community on May 10, 1996.⁵⁸ In 1997, State Copyright Office promulgated the Rule on Copyright Administration Punishment in January and the Regulation on Protecting Botanic New Breed was came into force on October 1, which ensured adequately investors’ legal rights and extended the scopes of China’s IPP.⁵⁹ The Regulation on the Localization of Hong Kong Copyright Law was came into force on June 27, 1997. In 1999, China and the United States reached the agreement on China’s accession to the WTO.

The Copyright Law that was modified secondly came into force on 27 October 2001, which revised those sections against the TRIPS and brought China into closer compliance with the TRIPS. The law expanded the protection of compilation works, added the right to transmit via the Internet to the list of copyrights, regulated assignment of copyright and also strengthened enforcement measures against infringement, introducing a preliminary injunction procedure to stop infringement and preserve evidence.⁶⁰

56. Yang, D.; Clarke, P. 2005, P3

57. Wang Lina, 2004, P5

58. Liu Chuntian, 1998, Pp 348-367

59. State Council of P.R.C, 2005, P10

60. Wang Lina, 2004, P6

On December 11, 2001, China entered into the WTO after 15 years of negotiations and struggling, “as required, the obligation to introduce and enforce IP laws became mandatory for member countries of the WTO”.⁶¹ So it became an accelerator of the improvement of China’s existent IP laws. Comprehensive modification and update of the IP system were put in practice in succession to comply fully with the conditions required by the WTO. China’s government amended the Detailed Rules on the Implement of Trademark Law and changed its name into the Regulation on the Implement of Trademark Law in August 2002, and then established and modified some rules, regulation related to Patent, Copyright, and Trademark. For example, the Implementation Regulation of Copyrights Law was further amended to ensure that foreign copyright owners receive legal protection equal to that of their Chinese counterparts.⁶² Consequently, the basic content of China’s IP laws had reached the standards of the TRIPS, including the object and duration of the protection and the scope of the rights during this period.

3.3.2 The Development on the field of administration and judicature

Some institutes, offices and authorities related to IP were established and organized after China’s signing of the Action Plan for Effective Protection and Enforcement of Intellectual Property Rights between China and the United States in February 1995 and they were also named under Enforcement Task Forces (ETFs), which was to have all necessary authority and was to use its resources to initiate and carry out investigations of any suspected infringement of IP. China IP Training Center was set up on April 1, 1996, the Supreme People’s Court set up its IP trial chambers in October 1996.

And China Copyright protection center was established on September 22, 1998. On March 29, 1998, SIPO replaced the Patent Office of the People’s Republic of China (CPO),⁶³ and became the competent authority in charge of patent affairs and the coordinating authority for foreign-related intellectual property issues directly under the control of the State Council, which is one of the results of the restructuring of the government agencies. SIPO played an important role in China’s IP enforcement, the overall coordination of the policies and measures for the effective protection and enforcement of IPRs. In addition, the National Copyright Administration of China and

61. Wang Lina, 2004, P6

62. Yang, D.; Clarke, P. 2005, P12

63. Liu Chuntian, 1998, Pp 320-352

the Trademark Office of China respectively concentrated on the management of copyright and trademark. There were also local bureaus of patent, trademark and copyright in every province of China.⁶⁴

China's judicial departments had stepped up efforts to strengthen enforcement of IP laws, to better regulate the audio and audiovisual market, to deal with corporate end-user piracy of software and to begin tackling the enormous problem of wholesale journal piracy throughout the nation in order to bring China up to the requirements of the WTO.⁶⁵

3.3.3 The Development and Achievements on other fields

The first school of IP was set up in Beijing University on June 15, 1995. Thereafter, the IP laws and some common sense on IP was gradually involved into the scope of study in every universities. Certainly, education played an important role in teaching Chinese consumers what was the value and importance of IP. China's government also actively organized and implemented abundantly propagandistic activities on IPP by utilizing newspapers, periodicals, broadcast, television and Internet, by holding proseminars, training classes, and so on. Through these efforts, the public has gained a stronger understanding about IP; increasingly firms and companies realized that those mark and trademark owned by different firms and companies were significant for consumers, manufacturers and authoritative organs, they allowed consumers to identify their favorite brands from other similar products, and allowed manufacturers to distinguish their products from their rivals, and allowed examining bodies to differentiate quality and features.

Official statistic showed that China's IP activities experienced a swift and obvious rise in between 1980 and 2006, for examples, the amount of trademark applications was only about 20,000 in 1980, the amount reached 500,000 in 2004, the sum from 1980 to 1999 was about 256,000, but the sum rose to about 1906,000 between 2000 and 2004. Up to 2004, the sum of registered trademark in China achieved about 2240,000.⁶⁶ There was a domestic patent applications increased from 140,339 to 251,238 between 2000 and 2003, a fast increase of foreign patent applications from 30,343 in 2000 to 102836 in 2006. The situation was very different from that in 1980s when the amount of the

64. Wang Lina, 2004, Pp 4-5

65. Yang, D.; Clarke, P. 2005, Pp4-6

66. State Council of P.R.C, 2005, Pp 6-8

foreign and domestic patent applications was almost alike. As to the grant of patent, the number of grants to foreign and Chinese applications is almost equal before 1995, the gap becomes wider from 1995, the foreign grants account for 63% of the total from 1995 to 2002. “The higher number of grants to foreign applications indicates not only the higher quality of foreign patents but also the suitability of these technologies to Chinese market.”⁶⁷ However, the amount of foreign grants obviously declined to the 18% of the total, the situation always continued after that, the proportion was 16.5% in 2006. The evident change showed Chinese enthusiasm in creation had heightened remarkably under the efforts of China’s government and the stimulating of economic development. Up to 2006, the accumulative total of local Chinese patent applications reached about 2.8 million.⁶⁸ In addition, the amount of China’s international patent applications achieved 3826 in 2006, the rise of the amount illuminated China’s enterprises had increasingly participated in the international competition.

From 1995 to 2004, all levels related administrative departments captured 35 million piratical goods, accepted 51368 related cases and ended 49983 of them, including to punish two Chinese corporations which infringed the copyrights of American Microsoft Ltd. In addition, about 38.95 million illegal trademarks and counterfeit goods were captured and destroyed by melting or burning.⁶⁹ In 1996, China agreed to set out the steps to insure effective IP protection for responding to the announcement from the Clinton Administration. During the period, China closed down a number of factories and illegal production facilities and unauthorized laser CDs, CDs, video CDs and other publications.⁷⁰

Statistic from supreme court showed that in 2005 all levels courts accepted 3567 IP infringing cases, 16583 civil cases related to IP infringing, and condemned 5336 appellees, 2963 of them were condemned to set term of imprisonment based on the judicial explanation promulgated in the end of 2004, which indicated that persons who sale over 5000 pieces pirating goods would be condemned imprisonment from 3 to 7 years.⁷¹

67. Yang, D.; Clarke, P. 2005, P6

68. SIPO’s website

69. State Council of P.R.C, 2005, “The White Book on the New evolution of China’s Intellectual Property Protection”, Pp6-8

70. Wang Lina, 2004, P3

71. From www.news.cn http://news.xinhuanet.com/misc/2006-03/11/content_4290003.htm

Every China's customs had put the emphases of enforcement on the examination of counterfeit and piratical goods since 1996 in order to restrain the illegal activities of infringing IP. From 1996 to 2000, all China's customs uncovered 4361 related cases, 63 million Yuan RMB was involved. According to the Criminal Law, the ministry of public security established special organization in order to enhance the force to strike and stop the activities of counterfeiting and piracy. From 2000 to 2004, all organs of public security in China uncovered 5305 related cases, 2.2 billion Yuan RMB was involved, 7100 suspects were arrested. Countrywide courts judged about 40000 cases related to infringe IP and condemned 2375 criminals from 1998 to 2004.⁷²

With the increasingly multinational cases related to infringe IP, China's organs of public security enhanced the international cooperation on enforcement, such as the assistance of survey and obtaining proof, the notification of related clues and the intercommunion of information. In July 2004, a big case that related to sell pirate DVD was uncovered by the cooperation between China's organs of public security and American related organs, arrested 7 suspects including the head of them, an American, captured 210,000 pirate DVDs.⁷³

With the gradual perfect of IP system, China's government has transferred obviously the emphases of IPP from the legislation to the enforcement and the popularization in order to realize the comprehensive protection of IP during this period.

4. Problems and Suggestions about China's IPP

In the part, some current and intractable problems, and some related suggestions about the development of China's IPP will be illuminated. It is undeniable that China has devoted much manpower, materials and financial resources for IPP and mobilized various institutions to carry out acts of cracking down on counterfeiting and pirating and has achieved a good deal of significant results during the past 28 years.⁷⁴ However, there still is a lot of regions and fields on China's IPP system that are considered insufficient and even worse.

72. State Council of P.R.C, 2005, "The White Book on the New evolution of China's Intellectual Property Protection", Pp11-13

73. Ibid

74. Wang Lina, 2004, P6

1) **Complex and Confusing IP Related Laws**

As a developing country, it is an intractable problem for China to make the evolution of existing IP laws keep abreast of the rapid development of economy. On the one hand, IP laws were constantly modified and updated according to the economic development and the request of international community. On the other hand, in such short period, a good deal of IP laws, regulations, rules and explanations were promulgated, implemented, amended, updated and abolished under the huge pressure from international community and the lack of IP professionals, which made China's IP related laws, regulations, rules and explanations theoretic, complex, confusing and even incompatible. Under these circumstances, different judges and lawyers maybe arrive at a different understanding for the same law and explanation based on their distinct educational backgrounds and experiences.

In addition, there are many types in China's legal system, such as laws, regulations and rules, which are drafted and promulgated by different governmental departments. Facing to the complex legal system, Chinese judges and lawyers often feel perplexed. Moreover, the English version of these laws, regulations and rules are more confusing. For example, the NPC and its Standing Committee promulgate "Fa", literally "laws"; the State Council announces "Fa Gui", literally "laws and regulations"; the Ministerial governments issue "Bu Men Gui Zhang", literally "departmental rules and regulations"; and provincial governments state "Di Fang Fa Gui", literally "local laws and regulations", but all the above are either "laws" or "regulations" in English.⁷⁵ So it is more different for foreigners who cannot read Chinese to understand such legal system. Therefore, a set of uniform, clear IP laws with effective, intensive and extensive enforcement still is an urgent need for China.

2) **Rampant Counterfeit and Pirate**

International community especially America expressed the critical of the lack of action against counterfeiting and piracy in China over and over again although China's government has paid much attention to stop counterfeiting and piracy. "In the Seventh Annual BSA Global Software Piracy Study report that lists the 25 countries with the highest software piracy rates, China stands in second place among the offenders, with a software piracy rate of 92% in 2001"⁷⁶ Why are the IP infringements so rampant in

75. Yang, D.; Clarke, P. 2005, P3

76. Wang Lina, 2004, P3

China? First of all, “the driving force of such piracy activities is the simple technology, low risks and high returns involved. As a result, the price of pirated products is most probably much cheaper than the original ones. With the latest technology, pirated products are generally of similar quality to the originals, though after-sale services are not guaranteed.”⁷⁷ Secondly, China’s piracy market is mature, there are numerous small and medium-sized firms that produce and sell pirated software, CD, DVD and so on. Thirdly, foreign genuine goods are often too expensive for the common consumer for high tariffs, inflated agency fees and unrealistic expectations of profit and The high price of the genuine products makes counterfeit and pirated goods more attractive;⁷⁸ the last but not least, the average purchasing power of Chinese consumers whose annual salary is about \$1,200 is not high. According to these current situations, most Chinese consumers and families are not able to afford the legitimate product and have accepted the habit of consuming pirated products regardless of the forbidding of laws and legislations.

In order to control effectively the spread of counterfeit and pirated products, on the one hand, China’s government need to extend the scope of strike, strengthen the power of strike, for examples, deploying comprehensive and rigorous activities against counterfeit and pirating in the whole country in the same time, heightening financial penalties and other harsher punishments for counterfeiters and pirates, in particular for those intentional and repeated; on the other hand, China’s government need to rise public awareness on IPP, insist on the propagandizing and popularization of related IP law, knowledge in the whole society, make citizens understand the importance of IPP for economic and social development, and make all owners of IP know what can be done to protect their rights.

3) The Qualities of the Related Operators

Related operators play crucial roles in the system of IPP, they impact directly the feasibility and effectiveness of IP laws, rules, regulations and explanations, the efficiency of the application and grant of patent and trademark, the quality of judgments, the development of China’s IPP system and the status of China’s IPP system in the realm of international IPP. However, the qualities of most administrative and judicial operators are not enough high in current China, the situation make some obstacles to the

77. Ibid, P6

78. Bian Zizhen, 1996., P2

development of China's IPP system from legislation to enforcement. Furthermore, with China's accession to the WTO, the demand for related IP workers has increased sharply. It is estimated that China should have 200,000 high-quality practicing lawyers in China by 2010. So China's government should pay more attention to heighten comprehensively the qualities of administrative and judicial operators and modernize China's IPP system through establishing high-quality professional workgroup on legislation, judicature, administration and enforcement. "The minimum educational requirements for the judges and professionals should at least include a degree in law"⁷⁹, related departments should hold special training class to related operators in-service regularly for making them meet the growing demands of professionals in IPP field. In addition, China's government should pay more money in public education on IP, arrange more capable judges and professionals go to universities to educate and dispense wisdom to the current and future generations, and dispatch proper professionals to attend those various regular general and specialized courses organized by WIPO, which train the officials and other personnel in the knowledge and practice of the various aspects of IP so that they may effectively organize and administer the IP system of their own countries, dispatch related operators to attend those judges' meeting held to promote exchanges of IPP between Chinese judicial departments and their foreign counterparts in the long run. It will provide China's IP operators with the most up-to-date, successful and practical experience for the implementation of IPP.⁸⁰

5. Conclusion

It is undeniable the concept of IP has drawn much more attention in the worldwide arena than before including China, and China has procured significant achievements on IPP from constitute of IPP system to gradual perfection of IPP system under globalization from 1978 to 2006 though the system was not perfect and some developed countries has never stopped rebuking the inadequate situation of China's IPP since 1978. However, objectively speaking, it is not easy to procure such achievements in less than thirty years for China, a developing country with 20% of the world's population. Some developed countries that have established IPP system for more than 100 years have no reason to request the IPP system of a developing country to arrive at the standard of developed countries and international convention in so short time although the

79. Wang Lina, 2004, P7

80. Ibid, Pp 7-8

sustained IPP in most developed countries has been standardized by international organizations such as the WTO and WIPO, and most developing countries are pushed to conform to these standards.⁸¹

Nowadays, China's government has confirmed the developmental guideline in the new period, namely, adjusting the structure of industry, changing the mode of economic growth and accelerating the independent innovation during constructing the harmonious society. IPP system plays a special role to implement the guideline, because IPP is the basis of creation and innovation, is the main impetus of the construction of modernization. Establishing and perfecting the IPP system is not only for performing China's promises to international convention, creating the favorable environment of trade and investment, but also for improving the order of market economy, heightening the quality of all country's economy and strengthening the competitive power of country. So like other countries around the world, China is also attempting to formulate the development strategy of IP for facing the rapidly developmental human society and it is reported that the IP strategy would be promulgated in 2007.⁸²

In conclusion, innumerable facts and data prove that China's IPP has experienced fleetly development and procured significant achievements in the process of globalization. Certainly, globalization not only accelerates the establishing and development of China's IPP system, not only brings many challenges to the development of China's IPP system which make continual amendments of China's IPP system will be required with the impact of globalization. Admittedly, from the development of China's IPP system, we clearly saw the rapidly evolution of China's economy; saw the voluntary and passive efforts of China's government; see the evident growth of the collectivity quality and the consciousness of China's citizens on IPP, and saw the gradually perfection of China's legal system.

81. Liu Gao, 1998

82. People's Daily, 2007-01-31

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