

China's Legal Integration with the Global Intellectual Property System and the Road Ahead

中国与全球知识产权体系的法律制度融合及未来之路

Conference on 20th Anniversary of China's Accession to the WTO
中国加入世界贸易组织20周年法治研讨会

China's Rule of Law and Accession to WTO
“中国法治发展与世界贸易组织”

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Three Aspects

三个方面

- China's implementation of its TRIPS commitments
中国对其TRIPS承诺的实施
- China's challenges in reconciling IP, industrial policy and social welfare
中国在调和知识产权、产业政策和社会福利方面的挑战
- The broader technology landscape and the future of relations with the West
更广泛的技术格局和与西方关系的未来

Implementation of TRIPS

TRIPS的实施

- Remarkable degree of change from entry into force of TRIPS Agreement
《与贸易有关的知识产权协议》生效后发生了明显的变化
- In terms of implementing IP norms, China has accomplished in 25 years what took more than 200 years (from late 1700s) in the West
在实施知识产权规范方面，中国在25年内完成了西方国家花了200多年（从十八世纪末开始）才完成的工作
- In terms of technical IP laws and regulations China has brought itself into compliance with TRIPS
在技术知识产权法律和法规方面，中国已经与TRIPS接轨
 - Even between the EU and US there are disputes on particular technical issues, as with China – “nobody's perfect”
即使欧盟和美国在特定的技术问题上也存在争议，就像中国一样，所谓“人无完人”
 - The big technology issues are not TRIPS Agreement-specific
大的技术问题不是TRIPS协议独有的

Implementation of TRIPS

TRIPS的实施

- Under-appreciated outside China is the depth of analysis going into China's approach to IP
在中国以外的地方，人们对中国知识产权模式涉及的分析深度认识不足
 - Based on personal experience within China, in Geneva and elsewhere
基于中国国内、日内瓦和其他地方的个人经验
 - Decision-making is based on extensive research and internal debate
决策是建立在广泛的研究和内部辩论基础上的
- One item deserving attention is incentives for filing patent applications that place burdens on patent office personnel and may create counterproductive patent thicket
一个值得关注的问题是对专利申请的激励措施，它给专利局人员带来了负担，并可能造成适得其反的专利丛林

Reconciling IP, Industrial Policy and Social Welfare

调和知识产权、产业政策和福利

- China faces demographic and health system challenges
中国面临着人口和卫生系统的挑战
- Strengthening of patents and market exclusivity rights in favor of medicine innovators sets up tension with pricing of treatments needed to address difficult areas, e.g., cancer treatment
加强有利于医药创新者的专利和市场独占权，与解决困难领域（如癌症治疗）所需的治疗定价产生了矛盾
 - Traditional balancing mechanisms include price controls, nonvoluntary licensing and competition law enforcement, but each has its limitations
传统的平衡机制包括价格控制、非自愿许可和竞争法的执行，但每种机制都有其局限性
 - There is room for developing a sui generis or unique approach within China
在中国，存在着发展独具一格的特殊方法的空间

Reconciling IP, Industrial Policy and Social Welfare

调和知识产权、产业政策和福利

- Interests in other areas - e.g., electric vehicles, the digital economy, civil aircraft, space exploration, environmental sustainability - entail different balances
其他领域的利益--如电动汽车、数字经济、民用飞机、空间探索、环境可持续性--需要不同的平衡
- Can differentiated rule systems be developed? How will this square with Article 27.1 of the TRIPS Agreement? Differentiation or discrimination?
能否制定差异化的规则体系？这将如何与《与贸易有关的知识产权协议》第 27.1 条保持一致？差异化还是歧视？
- Competition law is a major area of Chinese advance that can be used to police the road. Guideposts needed
竞争法是中国进步的一个主要领域，可以用于前进道路上的执法。需要指导原则

The Challenge of East-West Relations

东西方关系的挑战

- Core issue in the West is perceived requirement within China to transfer technology as a condition of foreign direct investment
西方的核心问题是认为中国内部要求将技术转让作为外国直接投资的条件
 - Addressed with US in Phase 1 economic agreement
在第一阶段的经济协议中与美国解决了这个问题
 - WTO dispute with the EU pending
与欧盟的世贸组织争端尚未解决
- Argument less with specific textual compliance by China because language of WTO Agreements unlikely to resolve; issue more of compliance with "spirit" of TRIPS and the nature of the bargain
由于WTO协议的表述问题不可能解决，所以中国遵守具体文本的争论较少；问题更多的是遵守TRIPS的“精神”和谈判的性质
 - Effectively a non-violation complaint that patent owners deprived of the bargain for opportunity to exploit; but was there really this bargain?
实际上是一个非侵权投诉，即专利权人被剥夺了利用机会的谈判；但是否真的存在这种谈判？

The Challenge of East-West Relations

东西方关系的挑战

- For less technologically developed regions like Africa, conditioning FDI on transfer of technology continues to be a reasonable idea, even if not pursued
对于像非洲这样的技术欠发达地区来说，以技术转让为条件的外国直接投资仍然是一个合理的想法，即使没有得到执行
- For more technologically advanced areas, e.g., today's China, situation might resolve itself over time as China's reciprocal interest in avoiding conditions on external foreign direct investment would push for change in domestic policy (as with strengthening patents)
对于技术更先进的地区，例如今天的中国，随着时间的推移，问题可能会自行解决，因为中国避免对外国直接投资被附加条件的互惠利益考虑会推动国内政策的改变（正如强化专利保护）
- Reciprocity may be breaking down as China looking away from US and EU as FDI opportunities
由于中国不再将美国和欧盟视为外国直接投资的机会，互惠关系可能正在瓦解

The Challenge of East-West Relations

东西方关系的挑战

- US Congress pushing back, as are EU institutions
美国国会和欧盟机构都在进行反击
- Entering a prolonged period of semi-isolation on all sides?
各方都进入了一个长期的半孤立状态?
 - Managed trade has made a comeback, see the recent EU-US steel settlement
有管理的贸易已经卷土重来，见最近欧盟和美国的钢铁解决方案
 - No evident path to fixing
没有明显的修复之路
- Period of maximum global integration pressure could be behind us, at least for the near to medium term
全球一体化压力最大的时期可能已经过去了，至少在近、中期是这样

Where to the WTO? 世贸组织何去何从？

- The role of the WTO in global relations is being redefined
世贸组织在全球关系中的作用正在被重新定义
- New area agreements such as to address trade and sustainability/climate change or on multilateral investment seem remote
新领域的协议，如处理贸易和可持续性/气候变化或多边投资的协议似乎很遥远
- Major question is whether core competence of WTO in mediating and resolving disputes can be preserved. Today an open question
主要的问题是，WTO在调解和解决争端方面的核心能力是否能够得到保留。这在今天是一个悬而未决的问题