中国的知识产权法律制度

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摘要：刘晓霞副司长主要介绍了中国知识产权法律的基本构架及特点。她回顾了中国知识产权立法历程，详细介绍了中国《专利法》、《著作权法》和《商标法》等主要知识产权法律的主要内容及特点，并强调除了重视国内知识产权立法，中国还积极参与国际知识产权交流与合作，中国在知识产权立法上所表现出来的透明度、公开度以及取得的成就赢得国际社会一致认可。

Abstract: Ms. LIU Xiaoxia mainly introduced the basic legal framework and features of Chinese IP laws. She reviewed the history of Chinese IP legislation and introduced in detail major provisions and characteristics of important IP laws including Patent Law, Copyright Law and Trademark Law. Ms. LIU further stressed that the Chinese government is also actively engaged in international cooperation on IP protection. The transparency, openness and achievements in Chinese IP legislation are widely recognized by the international community.

知识产权是现代财产权的重要组成部分，知识产权制度是浇注在天才之火上的利益之油。依法保护知识产权，对于鼓励创新，促进科学技术发展，提高社会生产力，增强国家竞争力，具有极为重要的意义。

中国政府高度重视知识产权法律制度建设。20 世纪 70 年代末，商品经济在中国的发展对保护知识产权提出了要求，中国也因此开始了知识产权法律制度建设。新中国的知识产权立法甚至还先于中国的民事基本法——《民法通则》的颁布。改革开放以后，中国在 1982 年就制定了《商标法》，1984 年就制定了《专利法》，但是直到 1986 年才完成《民法通则》的制定，并在《民法通则》中对知识产权作了专节规定。1990 年中国制定了《著作权法》。中国初步形成了知识产权法律制度的基本框架。

20 世纪 90 年代，随着改革开放的深化，中国提出建立社会主义市场经济体制的改革目标，知识产权立法也有了重大进展，制定了《反不正当竞争法》、《知识产权海关保护条例》、《植物新品种保护条例》，对《专利法》、《商标法》作了修改，并在《刑法》中专节规定了“侵犯知识产权罪”，知识产权法律体系基本形成。

21 世纪以来，适应加入世界贸易组织的需要，又对《专利法》、《商标法》、《著作权法》进行了修改，制定了《集成电路布图设计保护条例》、《奥林匹克标志保护条例》、《世界博览会标志保护条例》等行政法规。经过三十年的不断努力，中国已经建立起了符合本国经济发展水平和国际通行规则、门类比较齐全的知识产权法律体系。

中国的《专利法》及其实施细则，对我国专利制度作了详细具体的规定。我国的专利法律制度，主要包括以下内容：一是可以授予专利权的条件。我国专利制度将发明、实用新型和外观设计三种发明创造规定为可以获得专利权保护的客体，并规定获得专利权的发明和实用新型应该具有创造性、新颖性和实用性，获得专利权的外观设计应当不属于现有设计。二是专利的申请和审查。包括提出专利申请的文件要求，专利申请的审查和批准程序等。三是专利权的期限、终止和无效。我国发明专利权的有效期为 20 年，实用新型和外观设计专利权的有效期为 10 年。专利授权后，任何人认为已授予的专利权不符合法定条件的，可以依法请求国务院专利行政部门宣告该专利无效。四是专利实施的强制许可。根据世界贸易组织《与贸易有关的知识产权协定》的规定，我国规定了专利实施的强制许可制度，并规定了强制许可的申请程序和具体条件。五是专利权的保护。包括专利侵权行为的认定，侵权损害赔偿数额的计算等。为进一步鼓励创新，提高专

利质量，2008 年，中国对《专利法》进行了第三次修订，提高了专利授权标准，完善了专利审查程序，加强了对专利权的保护。

中国的《著作权法》及其实施条例对以各种形式创作的文学、艺术和自然科学、社会科学、工程技术等作品给予著作权保护。中国主要规定了以下著作权法律制度：一是规定了可以获得著作权保护的作品的范围。二是规定了著作权的具体内容和各类作品著作权的归属。三是规定了著作权的有效期和著作权权利限制制度。我国著作权的有效期，自然人完成的作品，为作者一生及死后 50 年，法人或者其他组织完成的作品以及电影类作品，为初次发表后 50 年。为保障作品的合理传播，我国《著作权法》还规定了合理使用制度，规定在一定情形下使用作品可以不经著作权人许可。四是邻接权法律制度。我国《著作权法》对出版者、表演者、录音录像制作者及广播电台电视台在传播作品过程中所形成的邻接权权利作了明确规定。五是著作权的保护措施。包括对侵犯著作权行为的界定、侵犯著作权应承担的法律责任、侵权损害赔偿数额的计算等。此外，为加强对计算机软件的保护，中国还专门制定了《计算机软件保护条例》。针对互联网环境下著作权人及相关邻接权人信息网络传播权保护的复杂性，中国制定了《信息网络传播权保护条例》。中国还制定了《著作权集体管理条例》，规范著作权集体管理组织的设立和运行，使著作权人可以将一些通过个人难以行使的权利授权给依法成立的集体管理组织集中行使，从而实现自己的合法权益。2009 年，中国制定了《广播电台电视台播放录音制品支付报酬暂行办法》，对广播电台电视台播放录音制品向著作权人支付报酬的方式和标准作出了明确规定。

中国的《商标法》及其实施条例围绕注册制原则规定了商标法律制度。主要内容包括：一是申请商标注册的条件。我国《商标法》规定了商标的构成要素，规定了各种不得作为商标注册的标志，还明确了商标注册不得与在先申请商标和

其他在先权利相冲突。二是商标注册申请的审查程序。包括注册商标申请的文件要求、审查程序和异议程序等。三是注册商标的有效期。我国注册商标专用权的有效期为 10 年，但有效期满，需要继续使用的，可以申请续展，每次续展有效期 10 年。四是注册商标的撤销。我国《商标法》规定，对不符合法定注册条件的注册商标，可以请求商标评审委员会撤销该注册商标，对在使用注册商标过程中违反有关法律规定的，商标管理机关还可以依职权撤销其注册商标。五是注册商标的保护。我国《商标法》对侵犯商标专用权的行为进行了明确规定，并对侵犯注册商标专用权的行为规定了具体的行政和司法救济措施。目前，中国正在进行《商标法》的第三次修订，将致力于简化商标注册申请的程序，为申请人提供更方便、快捷的服务，并加大对商标权的保护力度。

此外，为保护商标以外的其他特殊标志，中国还制定了《奥林匹克标志保护条例》、《世界博览会标志保护条例》和《特殊标志管理条例》；为保护集成电路布图设计专有权，中国还制定了《集成电路布图设计保护条例》；为保护植物新品种权，中国还制定了《植物新品种保护条例》；为加强知识产权的海关保护，在进出口环节阻止侵权货物进出境，中国还制定了《知识产权海关保护条例》。

值得说明的是，中国的知识产权立法具有很高的公开性和透明度。中国的知识产权领域的立法，始终注意听取社会各界包括外国政府、权利人、相关行业组织的意见，在加入世界贸易组织后，知识产权领域的立法的历次重大修改，都公开向社会征求意见。中国知识产权立法的公开性与透明度有目共睹，也受到了国际社会的一致赞赏。

在开展国内立法的同时，中国政府积极参与知识产权保护国际交流与合作，自加入世界知识产权组织之后，相继加入了《保护工业产权巴黎公约》、《商标国际注册马德里协定》、《保护文学和艺术作品伯尔尼公约》、《世界版权公约》、

《专利合作条约》、《国际植物新品种保护公约》、《与贸易有关的知识产权协定》等 10 多个国际条约。

中国在知识产权法律制度建设方面取得的成就得到国际社会的普遍肯定。早在 1993 年，世界知识产权组织前总干事阿帕德·鲍格胥博士在回顾该组织与中国合作的历史时就指出，中国在知识产权立法方面，用十几年时间走过了西方发达国家通常需要一百多年的历程，“在知识产权史上，中国完成所有这一切的速度是独一无二的”。

加入世界贸易组织以后，中国政府审时度势，适时提出了建设创新型国家的战略，于 2008 年公布了《国家知识产权战略纲要》，把增强自主创新能力作为转变经济发展方式、调整产业结构的中心环节和战略基点。保护知识产权，大力提高知识产权创造、管理、保护、运用能力，是增强中国自主创新能力、建设创新型国家的必然选择。基于这种自身需要，中国还将继续不断完善知识产权保护法律制度。

当前，中国正处在改革开放和现代化建设的新的发展阶段，调整经济结构，转变发展方式，实现又好又快发展，迫切需要把包括科技、文化在内的知识资源作为经济社会发展的基础性、战略性资源。因此，在加大对科技和文化投入、促进知识资源开发与利用的同时，健全和完善知识产权制度，为知识的创造与运用提供持续的动力机制和有力的制度保障，推动经济社会的全面协调可持续发展，已经成为关系中国发展全局的历史性任务。

Chinese Intellectual Property Legal System

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Intellectual property right is an important component of modern property rights and IP system is the sunshine of interests that tends the blossom of talents. Legal protection of IP is significant to encouraging innovation, promoting science and technology development, improving social productivity and enhancing national competitiveness.

The Chinese government attaches great importance to the establishment of IP law system. The development of commodity economy in China in the late 1970's called for IP protection and that's when China started to establish IP legal system. Legislation of Chinese IP laws in New China even started earlier than that of China's basic civil law—*General Principles of the Civil Law*. After the reform and opening up, China formulated *Trademark Law* in 1982 and *Patent Law* in 1984, while the formulation of *General Principles of the Civil Law* was not finished until 1986 and a special section *General Principles of the Civil Law* was devoted to IP issues. In 1990, China laid down *Copyright Law*. The basic legal framework of Chinese IP laws has taken its initial shape by then.

In the 1990's, as the reform and opening up deepened, China put forward the goal of establishing socialist market economy system, and IP legislation also witnessed great progress. IP laws including *Law of the People's Republic of China for Countering Unfair Competition*, *Regulations on Customs Protection of Intellectual Property* and *Regulations of the People's Republic of China on the Protection of New Varieties of Plants* were formulated. Amendments were made to *Patent Law* and *Copyright Law*. Moreover, a whole section of *Criminal Law* was devoted to "crimes of infringing upon IP rights". Chinese IP legal system was then basically formed.

With China's entry into WTO in the 21st century, further amendments were made to *Patent Law*, *Trademark Law* and *Copyright Law*. Administrative laws and regulations including *Regulations for the Protection of Layout-design of Integrated Circuits*, *Regulations for the Protection of Olympic Symbols* and *Regulations for the Protection of the World Exposition Symbols* were enacted. With continuous efforts made during the past three decades, China has established a relatively comprehensive IP legal system conforming to the level of national economic development and universal international rules.

Chinese *Patent Law* and its implementing regulations have set out detailed rules concerning patent system. China's patent laws and regulations mainly cover the following aspects: firstly, on the requirements for the grant of patent rights, this law has set inventions, utility models and designs as the objectives that can attain IP protection, and it is required that any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability. The design that is granted patent right should not be existing design. Secondly, on the application, examination and approval of patent rights, requirements on the documents of IP application, procedures of examination and approval are specified.

Thirdly, on the duration, cessation and invalidation of patent right, it is set that the duration of patent right for inventions shall be twenty years and the duration of patent right for utility models and designs shall be ten years, counted from the date of filing. Once the patent right is granted, any entity or individual that considers the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid. Fourthly, on the compulsory license for exploitation of patent, in accordance with relevant provisions in *Agreement on Trade-Related Aspects of Intellectual Property Rights* of WTO, China has set in the law the application procedures and requirements for compulsory license for exploitation of patent. Fifthly, on the protection of patent right, provisions in this section deal with the establishment of infringement of patent and the amount of compensation and so on. To further promote innovation and improve patent quality, China made the third amendment of *Patent Law* in 2008,thus improving the standard of the grant of patent right, perfecting the examination procedures of patent right and strengthening patent protection.

Chinese "Copyright Law" and its implementing regulations provide protection to works of literature, art, natural science, social science, engineering technology and the like in various forms. This law mainly covers the following areas: firstly, the scope of works that can get copyright protection; secondly, ownership of copyright; thirdly, duration and limitations of copyright. In respect of a piece of work of a citizen, the term of protection of copyright shall be the lifetime of the author and fifty years after his death. The protection term of the copyright of a work or a cinematographic work that belongs to a legal entity of other organizations shall be fifty years after the first publication of such a work. Chinese *Copyright Law* has also specified that under certain conditions a work may be exploited without the permission from the copyright owner. Fourthly, concerning the neighboring rights of copyright, this Law has laid down specific provisions about the neighboring rights formed in dissemination for publishers, performers, producers of sound recordings and video recordings and radio and television stations. Fifthly, on the protection of copyright, *Copyright Law* has specified the act of infringement of copyright, the corresponding legal responsibility and the amount of compensation for infringement. In addition, to strengthen software protection, China has formulated the specialized *Regulations for the Protection of Computer Software*. In view of the complexity involved in protecting the right of dissemination through information networks for copyright owners and relevant owners of neighboring rights, China set *Regulation on Protection of the Right to Network Dissemination of Information*. Besides, China also formulated *Collective Management of Copyright Regulations* to standardize the establishment and operation of copyright collective management organizations so that copyright owners can grant rights that are difficult to fulfill by the individual to legally established collective management organizations so as to realize his lawful rights. In 2009, China established the *Interim Measures on Remuneration from Broadcasting Station and Television Station for Playing Recordings*, fixing the form and standard by which broadcasting stations and television stations shall pay the recording copyright owners.

Chinese *Trademark Law* and its implementing regulations set provisions around

trademark registration which include the following aspects: firstly, requirements of application for trademark registration. Components of trademarks are listed and signs that shall not apply for trademark registration are clarified. Trademark registration should not be in conflict with prior trademarks or existing prior rights. Secondly, examination and approval of trademark registration. It covers the requirements for documentation, examination procedures and opposition procedures. Thirdly, the period of validity of a registered trademark shall be ten years, and when the validity period expires, renewal period can be applied. The period of validity for each renewal of registration shall be ten years. Fourthly, on the revocation of registered trademarks, it is specified in *Trademark Law* that for the trademarks that are not in conformity the relevant provisions of this Law, request can be sent to the Trademark Review and Adjudication Board to revoke the registered trademark. For those who act in violation of laws and regulations and relevant provisions during the registration of trademarks, the trademark administrative authorities can ex officio revoke the registered trademark. Fifthly, on the protection of registered trademarks. Chinese *Trademark Law* has stated clearly about the infringement of trademark rights and has set specific administrative and legal measures to combat infringement of registered trademark rights. China is currently working on the third amendment of *Trademark Law* aiming at simplifying the application procedures for trademark registration, providing more convenient and efficient service for applicants and strengthening protection of trademark rights.

Besides, in order to protect special symbols apart from trademarks, China has formulated *Regulations for the Protection of Olympic Symbols*, *Regulations for the Protection of the World Exposition Symbols* and *Regulations on the Administration of Special Signs*; to protect the ownership of layout-design of integrated circuits, China has set *Regulations for the Protection of Layout-design of Integrated Circuits*; to protect new varieties of plants, China has laid down *Regulations of the People's Republic of China on the Protection of New Varieties of Plants*; to strengthen customs' protection of intellectual property, *Regulations on Customs Protection of Intellectual Property* was enacted.

It is worth mentioning that legislation of Chinese IP laws demonstrates strong openness and transparency. IP legislation is always open to the views of the community including foreign governments, obligees and relevant industries and organizations. Since China's entry to the WTO, significant amendments of IP laws are all open to the community for views and comments. The openness and transparency in China's IP legislation are widely recognized by the international community.

Besides domestic IP legislation, Chinese government is also actively engaged in international exchange and cooperation of IP protection. Since China entered the World Intellectual Property Organization, it has successively acceded to over ten international treaties such as the *Paris Convention for the Protection of Industrial Property*, the *Madrid Agreement for International Registration of Trademarks*, the *Berne Convention for the Protection of Literary and Artistic Works*, *Universal Copyright Convention*, *Patent Cooperation Treaty*, the *International Convention on the Protection of New Varieties of Plants* and *Agreement on Trade-Related Aspects of*

Intellectual Property Rights etc..

China's achievements in establishing IP legal system is universally recognized by the international community. As early as 1993, Dr.Arpad Bogsch, Director-General of the World Intellectual Property Organization, when reviewing the history of China's cooperation with WIPO pointed out that China accomplished in just several decades what took western countries over 100 years in IP legislation, "China had accomplished all this at a speed unmatched in the history of intellectual property protection."

After joining in WTO, Chinese government sized up the situation and put forward timely the strategy of building an innovation-oriented country and promulgated *the National Intellectual Property Strategy Compendium* in 2008, setting self-innovation as the key link and strategic point in transforming the pattern of economic development and adjusting industrial structure. To protect IP and improve the ability of IP creation, management, protection and exploitation are a necessity in enhancing the ability of independent innovation and building an innovation-oriented country. Based on such needs, China will continue to perfect IP protection legal system.

China is currently on a new stage of reform and opening up and modernization. It is imperative to utilize knowledge resources including science and technology and culture as the fundamental and strategic resources for social and economical development in order to fulfill economical restructuring, transform development pattern and achieve sound and rapid development. Therefore, in addition to the increasing input in science and technology and the promotion of knowledge resource development and exploitation, it has become a historical task for China to perfect IP system so as to provide sustaining impetus and strong institutional guarantee to the creation and exploitation of knowledge and to promote all-round, coordinated and sustained social and economical development.