



China and IP

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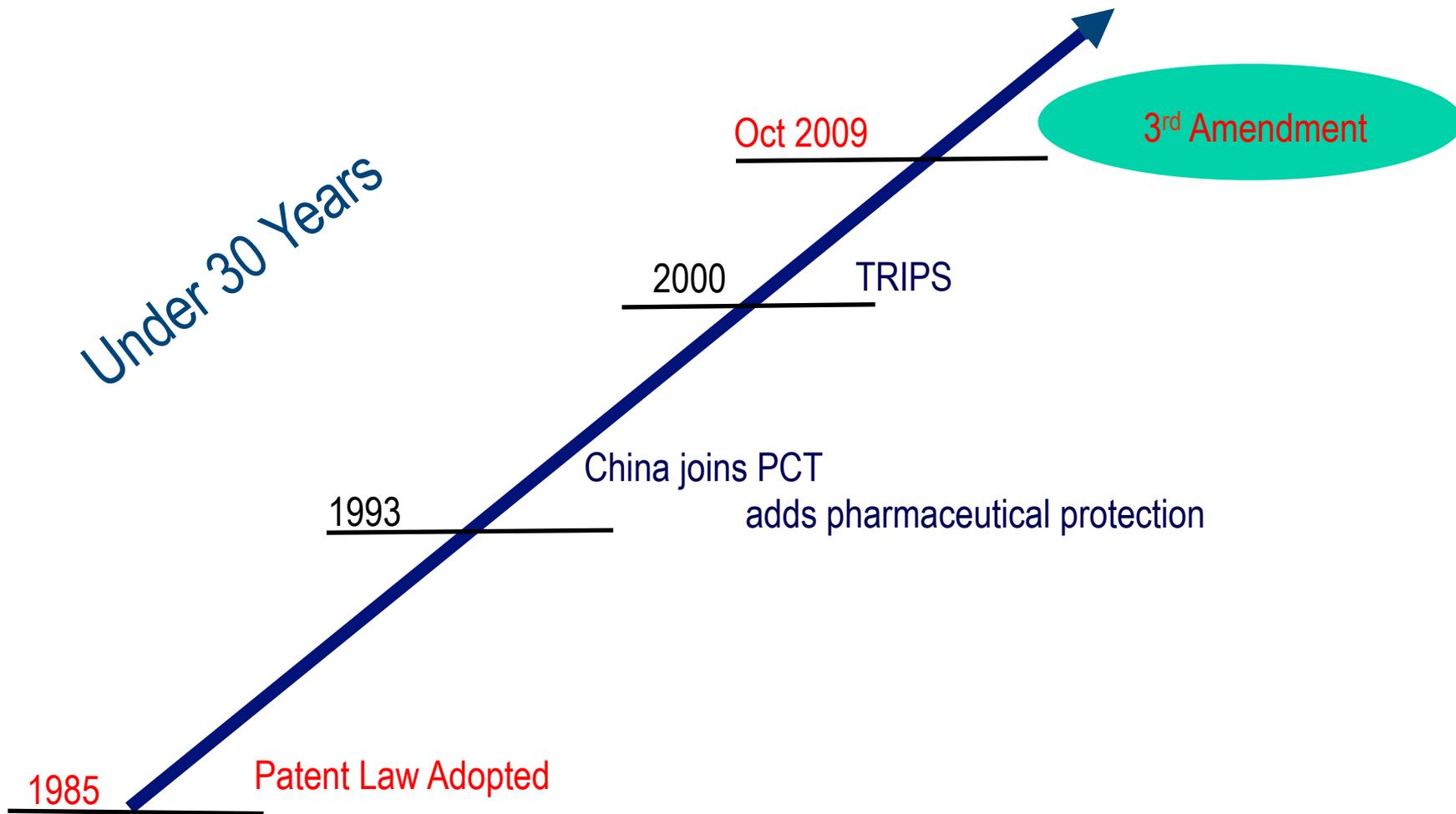
Finnegan

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CONTINUED DEVELOPMENT OF IP LAW & POLICY



Chinese Patent Law Evolved Quickly



Chinese Patent Law Evolved Quickly

- Recent Improvements (the West's view)
 - IP protections
 - Counterfeit/pirated goods
 - “Trademark grabbing”
 - Litigation involving multinational corporations



The West Sees Need for More Reforms

- “Forced” technology transfer
- Capped licensing fees
- Capped prices
- Preventing mergers to protect famous domestic brands



The West Sees Need for More Reforms

- Anti-Monopoly Law (AML) Concerns (US Chamber of Commerce)
 - Remedies often appear designed to advance industrial policy and boost national champions
 - Enforcement agencies often fail to rely on sound economic analysis



The West Sees Need for More Reforms

- Anti-Monopoly Law (AML) Concerns (US Chamber of Commerce)
 - Intellectual property rights have been curtailed
 - Due process shortcomings



The West Sees Need for More Reforms

- Compulsory Licensing as AML Enforcement
 - State Administration for Industry and Commerce (SAIC) Guidelines (April 2015)
 - “a business undertaking with a **dominant market position** shall be **prohibited from refusing to license its intellectual property** to other business undertakings under reasonable conditions in order to eliminate or restrict competition, **where the intellectual property constitutes an essential facility** in manufacturing or business operations”



The West Sees Need for More Reforms

- Compulsory Licensing as AML Enforcement
 - Factors used to determine whether IP is an essential facility:
 - substitutability
 - essential for other businesses to compete
 - whether refusal to license will have adverse effects on competition or innovation
 - whether compulsory licensing will cause unreasonable harm to the rights holder



Reason for Optimism?

- Third Plenary Session of the 18th Central Committee of the Communist Party of China (Nov. 12, 2013)
 - Greater role for market in resource allocation
 - Rules should be clear, predictable, easy to follow and apply



Reason for Optimism?

- 3rd Plen. Sess. of the 18th Central Comm.
 - Nondiscriminatory rights, opportunities, and rules
 - Incentives for innovation
 - Strengthen IP rights
 - Improve IP courts



Reason for Optimism?

- 25th annual Joint Commission on Commerce and Trade (“JCCT”) (Dec. 2014)
 - Equality for foreign and domestic companies.
 - Improved due process protections



Reason for Optimism?

- 25th annual Joint Commission on Commerce and Trade (“JCCT”) (Dec. 2014)
 - Advance notice of rulings following investigations
 - Investigation results will be public
 - Reasoning articulated



Thank you!



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- Managing Partner of Finnegan's Silicon Valley Office in Palo Alto, California.
- Twenty years of trial and appellate experience in the United States Supreme Court, Court of Appeals for the Federal Circuit, United States District Courts, and the United States International Trade Commission.
- Selected as one of the 75 Leading Intellectual Property Litigators in California by the Daily Journal, 2011-2014.
- Selected by his peers for inclusion in The Best Lawyers in America, 2013-2015.

