

China Engages with the Global Intellectual Property Governance: the recent trend

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Outline

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- Regulatory globalisation of IP and China
 - Active engagement vs responsive engagement
 - Conclusions and implications



Context: China's rising market power

- Second largest economy in the world since 2010
- World's largest trading nation (2013-2016)
- World's factory

Context: China's IP Activities



Chinese trademark office received more trademark applications than any other office since 2001.



Patent application submitted to SIPO has increased 24% annually since 2000, making SIPO the biggest patent office since 2011.



China aims to building itself as a leading intellectual property power in the world.

Two Predominant Impressions of IP in China



How China's rampant intellectual property theft, long overlooked by US, sparked trade war

The first article in a two-part series exploring the trade war between the world's two superpowers argues we should have seen it coming: Trump made getting tough on China central to his election campaign, but media looked the other way



Robert Boxwell
Published: 9:00pm, 28 Oct, 2018



Source: <https://www.scmp.com/magazines/post-magazine/long-reads/article/2170132/how-chinas-rampant-intellectual-property-theft>

The surprising rise of China as IP powerhouse

Wayne Sobon 3 years ago

Comment



The contrast could not be more stark: Xi Jinping, the first president of China to attend the World Economic Forum in Davos in January, leading the largest Chinese contingent ever and pledging **enduring support for free trade and open markets**, versus newly inaugurated President Donald Trump promising to "make America First" and threatening renewed trade barriers, especially with China, and dumping the TPP.

Mr. Xi was treated like a rock star by the Davos capitalists, and while never mentioning Trump, he did say China's growth will be "driven by innovation."

Source: <https://techcrunch.com/2017/04/11/the-surprising-rise-of-china-as-ip-powerhouse/>

Wayne Sobon
Contributor

Attorney and consultant Wayne P. Sobon is former president of the American Intellectual Property Law Association. Following the 2016 election, he is a frequent commentator on Acceptance, Rambo and Co. where Wayne provides integrated intellectual

From Market Power to Regulatory Power

- ▶ Globalization of
 - markets,
 - firms,
 - regulation (Braithwaite and Drahos 2000: 8–9)

- ← *“These are distinct processes with contingent rather than necessary connections among them.” (Drahos 2017)*

- ▶ To what extent does Chinese surging IP activities translate into its regulatory power?
- ▶ Has China become a global governor of intellectual property?
 - Global governor: those who creating issues, setting agendas, establishing and implementing rules, and evaluating outcomes (Avant, Finnemore, and Sell 2010).

China's Engagement in Global IP Governance

When we are talking about “engagement”

- a spectrum of behaviour by which a state interacts with international system
- conscious and purposive
- focusing on processes rather than outcomes
- broader than being global governors

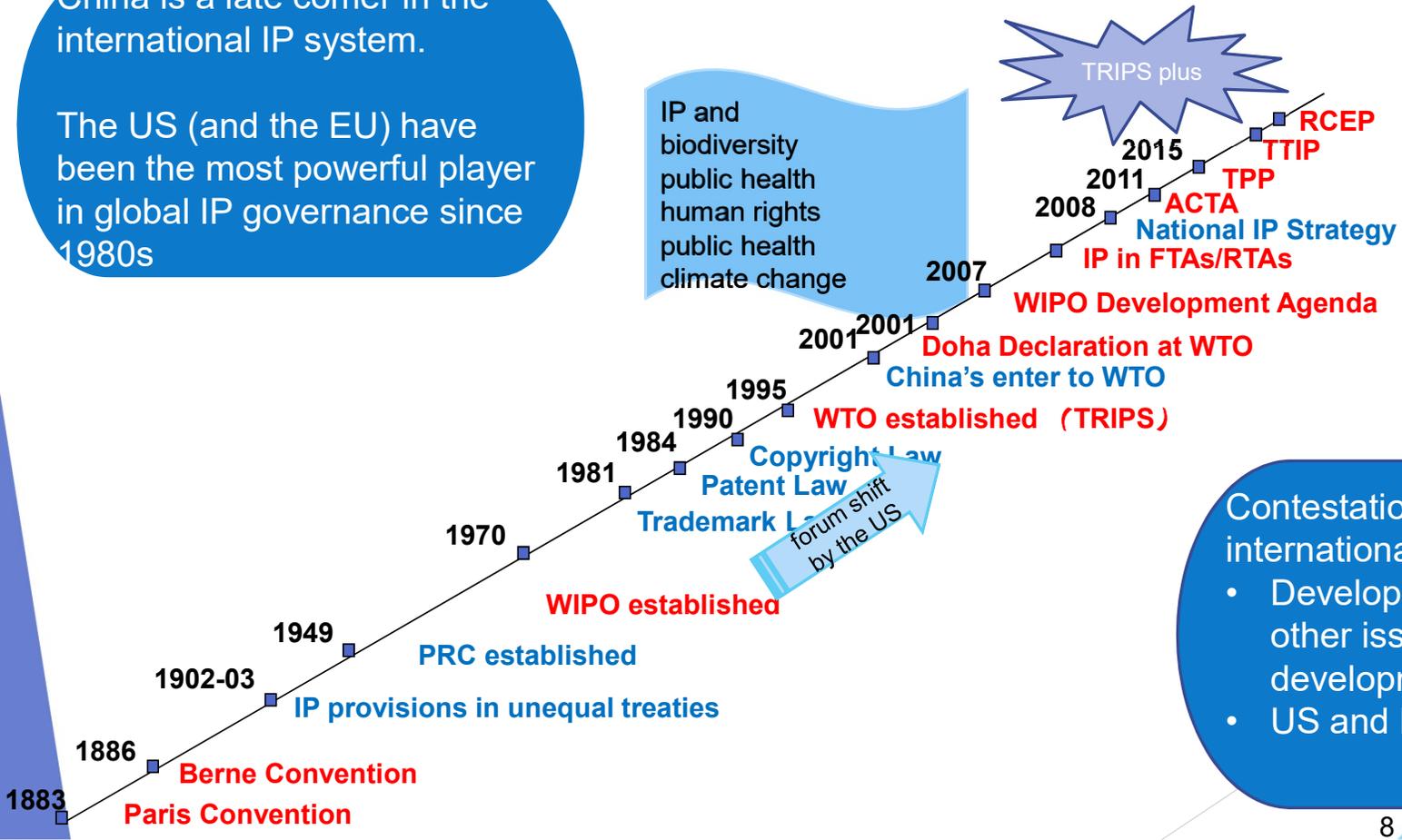
Two types of IP engagement

- Responsive engagement: How did China respond to the global IP ratchet to set higher IP standards?
- Active engagement: How did China actively promote its own agenda for the global governance of IP?

Response to what: Global IP governance at a glance

China is a late comer in the international IP system.

The US (and the EU) have been the most powerful player in global IP governance since 1980s



Contestations in agenda setting in the international IP system after TRIPS:

- Developing countries link IP to other issues essential to development
- US and EU: vertical forum shifting

China's Responsive Engagement

Vertical forum shifting via plurilateral/regional agreements and FTAs

- E.g. Anti-counterfeit Trade Agreement (ACTA) and Trans-Pacific Partnership (before the US' withdraw)
- The webs of influences through FTAs and regional/plurilateral trade agreements create certain “pressure to join” the club, but such pressure is not international obligation.

China's response: firm and clear opposition

- At the TRIPS Council meeting in 2010, China and India, supported by a number of developing countries, firmly resisted ACTA. Both countries argued that ACTA would not only conflict with TRIPS and other WTO agreements and cause legal uncertainty but also undermine the balance of rights, obligations, and flexibilities that were negotiated in the various WTO agreements.

China's Active Engagement

Incentives

- Surging IP registration provides incentives for SIPO to be a node in the global IP governance
- Increasing discursive power in intellectual property

Examples

- China and IP agenda setting at RCEP
- IP arrangement in BRICS
- IP in the Belt and Road Initiative

Call for Discursive Power and Implication for Intellectual Property

“The global trade system has undergone the biggest restructure after the Uruguay Round in 1994. China is not only an active participant and firm supporter for economic globalisation but also an important builder of and a major beneficiary of globalisation. We cannot be bystanders and followers; instead, we have to be participants and leaders. We will have China’s voice heard in setting international standards, have the Chinese characteristics integrated so that we can safeguard and expand Chinese interest in development.”

— President XI Jinping in his speech to disseminate successful experiences from the free trade zones

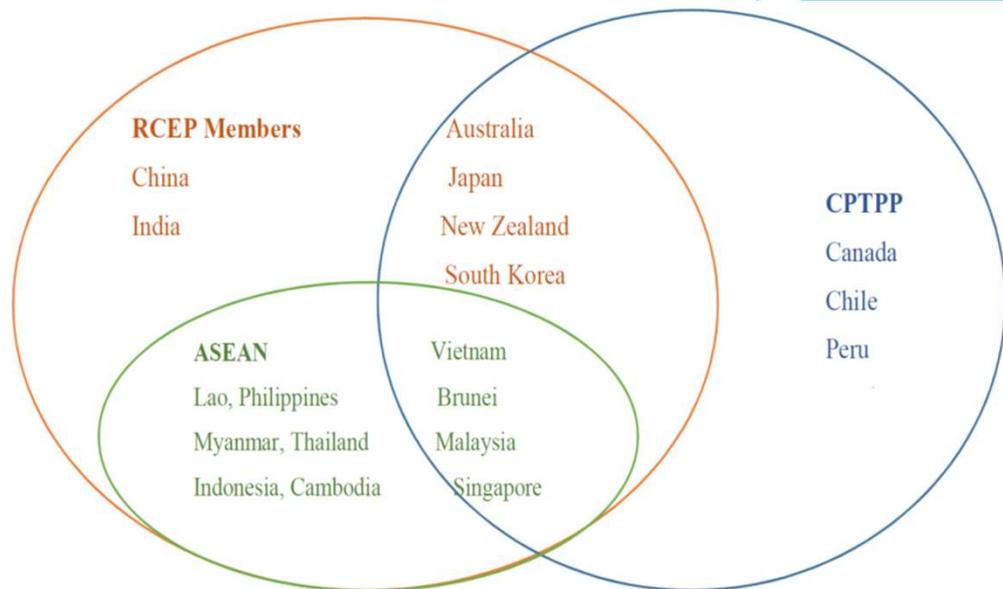
China's IP engagement in RCEP: Avoid Leadership

- ▶ China avoids being labelling as a “leader” in the RCEP negotiations

Neither RCEP nor FTAAP is dominated by China. RCEP is an ASEAN-led regional economic integration and cooperation, and China fully respects the ASEAN's core position and leading role. On this basis, China has cooperated with the parties to negotiate, and actively promoted the negotiation process, to conclude negotiations as soon as possible.

— Geng Shuang, the spokesperson for the China Ministry of Foreign Affairs (2016)

- ▶ There is a visible tension between China's ambition to be the world leading IP power and the degree to which it actually engages in the RCEP IP negotiations.
- ▶ Hard for China to coordinate positions between India on the one side and Japan, New Zealand as well as Australia on the other side.



Membership of RCEP, ASEAN and CPTPP

China and BRICS IP arrangements

Two IP cooperation mechanisms:

- The Heads of Intellectual Property Offices (HIPO) since 2012
- The BRICS IPR Cooperation Mechanism (IPRCM) since 2016

Joint Statement of HIPO (2018)

- maintaining close cooperation among BRICS IPOs is in the common interest of BRICS countries, which helps in creating favorable environment for innovation and sustainable development and promoting IP development in emerging economies; the BRICS IP cooperation shall fully take into consideration and respect the differences of economic development level, culture, innovating capacity and legal systems among BRICS countries.

China in BRICS IP Arrangements

Whether the BRICS countries will actively promote IP rules that are different from EU or US standards, as a coalition, depends on the solidarity of their interests.



The BRICS have different domestic IP standards and therefore different expectations concerning IP cooperation .



Possible in “strengthen cooperation in both traditional and emerging areas such as genetic resources, traditional knowledge, folklore and IP in internet environment”.



IP cooperation among the BRICS is likely to take a thin form such as information exchange and technical cooperation.

IP in the Belt and Road Initiative



Why intellectual property was incorporated as part of the BRI?

It is in China's interest that these countries have basic institutions for intellectual property so that China's exported technologies can be properly protected.



Common Initiative at the High-Level Conference on IP for BRI Countries in 2016

- exchange experience on IP laws and regulations, policies and strategies;
- enhance capacity building;
- cooperate in specific issue areas;
- raise public awareness of intellectual property;
- develop human resources in intellectual property;
- share and utilise intellectual property information.

Trust Me: Patent Offices in Developing Countries

Centre for Governance of Knowledge and Development Working Paper

35 Pages • Posted: 9 Nov 2007 • Last revised: 21 May 2014

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Date Written: November 2007

Abstract

The paper outlines the connections that have developed amongst the Trilateral Patent Offices and then one of those offices (the European Patent Office) and developing country patent offices. It argues that a relationship of technocratic trust exists between the EPO and developing country patent offices. The consequences of this for pharmaceutical patenting are considered. Two regulatory ideas for improving the quality of pharmaceutical patenting are put forward.

Keywords: patent offices, developing countries, pharmaceutical patenting, trust, access to medicines

Bilateral IP Arrangements with BRI Countries: Building Technocratic Trust

- ▶ Training offered by CNIPA to patent examiners from the BRI countries.
- ▶ Uzbekistan and China signed a bilateral agreement on IP protection and cooperation in June 2016.
- ▶ SIPO Memorandum of Understanding (MOU) between SIPO and the Cambodian Ministry of Industry and Handicrafts (MIH) in March 2018 provides that the Chinese patents will be validated (a formality registration process) in Cambodia without examination following a validation process lasts for 20 days.
- ▶ A “3+3” GI mutual recognition program between China and Thailand is in progress in which three geographical names from each side will be protected as geographical indications in the other party’s territory.

Conclusion

China is more affirmative in making defensive coalitions opposing TRIPS-plus standards proposed by developed countries than promoting its own IP initiatives.

- Responsive engagement: China has made coalitions with other emerging powers in defending the current multilateral IP standards.
- Active engagement: diversified
- RCEP: keeping low profile and avoiding leadership
- BRICS: thin cooperation in information exchange and technical cooperation
- BRI: building technocratic trust

China fumbled its way to navigate the international IP regime complexity, a way nuanced and refined than either one-way assimilation to the US-centered liberal order or a collision course with this order.

Observation of IP issues in the current US-China trade war reveals that China is still a regulatory importer in intellectual property.

Received: 6 August 2018 | Revised: 29 December 2018 | Accepted: 8 March 2019

DOI: 10.1111/jwip.12122

ORIGINAL ARTICLE

WILEY

THE JOURNAL OF
WORLD INTELLECTUAL PROPERTY

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Abstract

As China becomes the second largest economy in the world, there have been increasing domestic demands requesting China to engage with the global governance of various issues more closely. In intellectual property (IP), China has recently engaged with global IP governance both responsively and actively. This paper answer the questions (a) how did China respond to the global IP up-ratchet which sets higher IP standards; and (b) how did China actively promote its agenda for the global IP governance. This paper argues

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