

1: China: IP Laws and Treaties

Intellectual property rights (IPRs) have been acknowledged and protected in the People's Republic of China since [citation needed] The People's Republic of China has acceded to the major international conventions on protection of rights to intellectual property.

Application for Patent Chapter IV: Supplementary Provisions Chapter I: General Provisions Article 1. In this Law, "inventions-creations" mean inventions, utility models and designs. The Patent Administration Department Under the State Council is responsible for the patent work throughout the country. It receives and examines patent applications and grants patent rights for inventions-creations in accordance with law. Where an invention-creation for which a patent is applied for relates to the security or other vital interests of the State and is required to be kept secret, the application shall be treated in accordance with the relevant prescriptions of the State. No patent right shall be granted for any invention-creation that is contrary to the laws of the State or social morality or that is detrimental to public interest. An invention-creation, made by a person in execution of the tasks of the entity to which he belongs, or made by him mainly by using the material and technical means of the entity is a service invention-creation. For a service invention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee. For a non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, the inventor or creator shall be the patentee. In respect of an invention-creation made by a person using the material and technical means of an entity to which he belongs, where the entity and the inventor or creator have entered into a contract in which the right to apply for and own a patent is provided for, such a provision shall apply. No entity or individual shall prevent the inventor or creator from filing an application for a patent for a non-service invention-creation. For an invention-creation jointly made by two or more entities or individuals, or made by an entity or individual in execution of a commission given to it or him by another entity or individual, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity or individual that made, or to the entities or individuals that jointly made, the invention-creation. After the application is approved, the entity or individual that applied for it shall be the patentee. Where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first. The right to apply for a patent and the patent right may be assigned. Any assignment, by a Chinese entity or individual, of the right to apply for a patent, or of the patent right, to a foreigner must be approved by the competent department concerned of the State Council. Where the right to apply for a patent or the patent right is assigned, the parties shall conclude a written contract and register it with the Patent Administration Department Under the State Council. The assignment shall take effect as of the date of registration. After the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the authorization of the patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product; or use the patented process, and use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes. After the grant of the patent right for a design, no entity or individual may, without the authorization of the patentee, exploit the patent, that is, make, sell or import the product incorporating its or his patented design, for production or business purposes. Any entity or individual exploiting the patent of another shall conclude with the patentee a written license contract for exploitation and pay the patentee a fee for the exploitation of the patent. The licensee has no right to authorize any entity or individual, other than that referred to in the contract for exploitation, to exploit the patent. After the publication of the application for a patent for invention, the applicant may require the entity or individual exploiting the invention to pay an appropriate fee. The exploiting entity shall, according to the regulations of the State, pay a fee for exploitation to the patentee. Any patent for invention belonging to a Chinese individual or an entity under collective ownership, which is of great significance to the interest of the State or to the

public interest and is in need of spreading and application, may be treated alike by making reference to the provisions of the preceding paragraph. The patentee has the right to affix a patent marking and to indicate the number of the patent on the patented product or on the packing of that product. The entity that is granted a patent right shall award to the inventor or creator of a service invention-creation a reward and, upon exploitation of the patented invention-creation, shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded. The inventor or creator has the right to be named as such in the patent document. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China files an application for a patent in China, the application shall be treated under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity. Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to, in China, it or he shall appoint a patent agency designated by the Patent Administrative Department Under the State Council to act as his or its agent. Where any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may appoint a patent agency to act as its or his agent. The patent agency shall comply with the provisions of laws and administrative regulations and handle patent applications and other patent matters according to the instructions of its clients. The administrative regulations governing the patent agency shall be formulated by the State Council. Where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in China, it or he shall file first an application for patent with the Patent Administration Department Under the State Council, appoint a patent agency designated by the said department to act as its or his agent, and comply with, the provisions of Article 4 of this Law. Any Chinese entity or individual may file an international application for patent in accordance with any international treaty concerned to which China is party. The applicant filing an international application for patent shall comply with the provisions of the preceding paragraph. The Patent Administration Department Under the State Council shall handle any international application for patent in accordance with the international treaty concerned to which China is party, this Law and the relevant regulations of the State Council. The Patent Administration Department Under the State Council and its Patent Reexamination Board shall handle any patent application and patent-related request according to law and in conformity with the requirements for being objective, fair, correct and timely. Until the publication or announcement of the application for a patent, staff members of the Patent Administration Department Under the State Council and other persons involved have the duty to keep its contents secret. Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability. Novelty means that, before the date of filing, no identical invention or utility model has been publicly disclosed in publications in the country or abroad or has been publicly used or made known to the public by any other means in the country, nor has any other person filed previously with the Patent Administration Department Under the State Council an application which described the identical invention or utility model and was published after the said date of filing. Inventiveness means that, as compared with the technology existing before the date of filing, the invention has prominent substantive features and represents a notable progress and that the utility model has substantive features and represents progress. Practical applicability means that the invention or utility model can be made or used and can produce effective results. Any design for which patent right may be granted must not be identical with and similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country, and must not be in conflict with any prior right of any other person. An invention-creation for which a patent is applied for does not lose its novelty where, within six months before the date of filing, one of the following events occurred: Article 25 For any of the following, no patent right shall be granted: For processes used in producing products referred to in items 4 of the preceding paragraph, patent right may be granted in accordance with the provisions of this

Law. Where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted. The request shall state the title of the invention or utility model, the name of the inventor or creator, the name and the address of the applicant and other related matters. The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model. The claims shall be supported by the description and shall state the extent of the patent protection asked for. Where an application for a patent for design is filed, a request, drawings or photographs of the design shall be submitted, and the product incorporating the design and the class to which that product belongs shall be indicated. The date on which the Patent Administration Department Under the State Council receives the application shall be the date of filing. If the application is sent by mail, the date of mailing indicated by the postmark shall be the date of filing. Where, within twelve months from the date on which any applicant first filed in a foreign country an application for a patent for invention or utility model, or within six months from the date on which any applicant first filed in a foreign country an application for a patent for design, he or it files in China an application for a patent for the same subject matter, he or it may, in accordance with any agreement concluded between the said foreign country and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority. Where, within twelve months from the date on which any applicant first filed in China an application for a patent for invention or utility model, he or it files with the Patent Administration Department Under the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority. Any applicant who claims the right of priority shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application document which was first filed; if the applicant fails to make the written declaration or to meet the time limit for submitting the patent application document, the claim to the right of priority shall be deemed not to have been made. An application for a patent for invention or utility model shall be limited to one invention or utility model. Two or more inventions or utility models belonging to a single general inventive concept may be filed as one application. An application for a patent for design shall be limited to one design incorporated in one product. Two or more designs which are incorporated in products belonging to the same class and are sold or used in sets may be filed as one application. An applicant may withdraw his or its application for a patent at any time before the patent right is granted. An applicant may amend his or its application for a patent, but the amendment to the application for a patent for invention or utility model may not go beyond the scope of the disclosure contained in the initial description and claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs. Where, after receiving an application for a patent for invention, the Patent Administration Department Under the State Council, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly after the expiration of eighteen months from the date of filing. Upon the request of the applicant, the Patent Administration Department Under the State Council publishes the application earlier. Upon the request of the applicant for a patent for invention, made at any time within three years from the date of filing, the Patent Administration Department Under the State Council will proceed to examine the application as to its substance. If, without any justified reason, the applicant fails to meet the time limit for requesting examination as to substance, the application shall be deemed to have been withdrawn. The Patent Administration Department Under the State Council may, on its own initiative, proceed to examine any application for a patent for invention as to its substance when it deems it necessary. When the applicant for a patent for invention requests examination as to substance, he or it shall furnish pre-filing date reference materials concerning the invention. For an application for a patent for invention that has been already filed in a foreign country, the Patent Administration Department Under the State Council may ask the applicant to furnish within a specified time limit documents concerning any search made for the purpose of examining that

application, or concerning the results of any examination made, in that country. If, at the expiration of the specified time limit, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn. Where the Patent Administration Department Under the State Council, after it has made the examination as to substance of the application for a patent for invention, finds that the application is not in conformity with the provisions of this Law, it shall notify the applicant and request him or it to submit, within a specified time limit, his or its observations or to amend the application. If, without any justified reason, the time limit for making response is not met, the application shall be deemed to have been withdrawn. Where, after the applicant has made the observations or amendments, the Patent Administration Department Under the State Council finds that the application for a patent for invention is still not in conformity with the provisions of this Law, the application shall be rejected. Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention, the Patent Administration Department Under the State Council shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it. The patent right for invention shall take effect as of the date of the announcement. Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the Patent Administration Department Under the State Council shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or design shall take effect as of the date of the announcement. Where an applicant for patent is not satisfied with the decision of the said department rejecting the application, the applicant may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant for patent. The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and patent right for designs shall be ten years, counted from the date of filing. The patentee shall pay an annual fee beginning with the year in which the patent right was granted. In any of the following cases, the patent right shall cease before the expiration of its duration: Any cessation of the patent right shall be registered and announced by the Patent Administration Department Under the State Council. Where, starting from the date of the announcement of the grant of the patent right by the Patent Administration Department Under the State Council, any entity or individual considers that 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. The Patent Reexamination Board shall examine the request for invalidation of the patent right promptly, make a decision on it and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the Patent Administration Department Under the State Council. Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning. If, pursuant to the provisions of the preceding paragraph, the patentee or the assignor of the patent right makes no repayment to the licensee or the assignee of the patent right of the fee for the exploitation of the patent or of the price for the assignment of the patent right, which is obviously contrary to the principle of equity, the patentee or the assignor of the patent right shall repay the whole or part of the fee for the exploitation of the patent or of the price for the assignment of the patent right to the licensee or the assignee of the patent right. Where any entity which is qualified to exploit the invention or utility model has made requests for authorization from the patentee of an invention or utility model to exploit its or his patent on reasonable terms and conditions and such efforts have not been successful within a reasonable period of time, the Patent Administration Department Under the State Council may, upon the request of that entity, grant a compulsory license to exploit the patent for invention or utility model. Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the Patent Administration Department Under the State Council may grant a compulsory license to exploit the patent for invention or utility model. Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in relation

to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the Patent Administration Department Under the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model. Where, according to the preceding paragraph, a compulsory license is granted, the Patent Administration Department Under the State Council may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model. The entity or individual requesting, in accordance with the provisions of this Law, a compulsory license for exploitation shall furnish proof that it or he has not been able to conclude with the patentee a license contract for exploitation on reasonable terms and conditions.

2: The Patent Law of the People's Republic of China

Regulations for the Implementation of the Trademark Law of the People's Republic of China (Promulgated by Decree No. of the State Council of the People's Republic of China on August 3, ; Revised and Promulgated by Decree No. of the State Council of the People's Republic of China on April 29,) ().

Administration of the Standard for Patent Application Number 7. Issuance of the Standard 8. In order to meet the needs imposed by the rapid increase in the number of patent applications in China and to further improve the quality of the public service, amendments have been made in this Standard to the Rules for Patent Application Numbering taking effect on 1 April Standard for Patent Application Numbering 1. Scope This Standard has laid down the rules for patent application numbering. This Standard is applicable to any entity and individual who use a Chinese patent application number in any place and in any manner for different purposes, in particular, for the purpose of statutory procedure, documentation and publication. Terms and Definitions The following terms and definitions are used for the purpose of this Standard. Unless otherwise expressly provided for in the State laws, the State Intellectual Property Office shall have the authority to make final interpretation of the terms and definitions used in this Standard. Formulation Principles 1 Uniqueness Principle To make a patent application distinct from any other patent application in the acceptance and examination proceedings and in any other patent-related statutory proceeding, the rules for numbering patent application formulated in this Standard embodies the uniqueness principle. The uniqueness principle has two meanings. First, it means that in the proceeding for examination of the patent application and any other pertinent statutory proceeding, and in the period of continued existence of the patent right granted to the patent application, the State Intellectual Property Office shall assign only one patent application number to the patent application. When a divisional application is filed on the basis of a parent patent application, the divisional application will be given new patent application number, and the number of the parent application will remain unchanged. Second, a patent application number shall be used for one patent application only. Even if the patent application or the patent right granted thereto ceases to exist, it shall be impossible for the same patent application number to be used for any other patent application. To this effect, rules for numbering have been adopted for this Standard in such a scientific manner that a patent application number is composed of the number of the year when a patent application is accepted, the number indicating the class of the patent application and the series number indicating the relative order of the patent application. Rules for Patent Application Numbering 1 Composition of Patent Application Number A patent application number is shown by a number composed of 12 Arabic digits, containing three parts: From left to right, the first to fourth digits of a patent application number indicate the year in which a patent application is accepted; the fifth digit stands for the class of the patent application; and the sixth to twelfth digits 7 digits are the series number of the application showing the relative order of the patent application accepted. Each Arabic digit used in a patent application number is a decimal number. For example, indicates that the patent application is accepted in AD. The meaning of other Arabic numbers, other than the abovementioned numbers, when used to indicate classification of applications shall be separately provided for by the State Intellectual Property Office. The series application number in a patent application number of each calendar year will be renumbered, that is, from January 1 each year, the series application number in a newly issued patent application number do not follow the last number of the previous year, and the numbering will start anew from the number Check digit is placed after the patent application number, and a symbol of subscript single-byte-dot is used as a separating mark between them. Except otherwise provided for in the laws, regulations and administrative rules, the patent application number and check digit including the mark separating them shall be used together in the various proceedings under the Patent Law, the Implementing Regulations thereof and other relevant laws and regulations. No blank space should be used within the segment of the year number and the series number, between the series number and the separating mark or between the separating mark and check digit. Lexical

items, numbers, marks or blank spaces other than those provided for in 5. Administration of the Standard for Patent Application Numbers The administrator authorised by the State Intellectual Property Office is in charge of the administration of the standard for patent application number pursuant to the provisions of this Standard, and is responsible for creating an environment for the effective operation of this Standard for the patent application number. The specific functions and responsibilities of the administrator are as follows: Issuance of the Standard This Standard is issued on 14 July

3: Patent Law Of The People's Republic Of China - Intellectual Property - China

The law to protect trademarks in the PRC, the Trademark Law of the People's Republic of China, has gone through several revisions from the original law promulgated during the republican era.

Article 2 Women shall enjoy equal rights with men in all aspects of political, economic, cultural, social and family life. Equality between men and women is a basic State policy. The State takes the necessary measures to gradually improve the systems for protecting the rights and interests of women, in order to eliminate all forms of discrimination against women. The State protects the special rights and interests enjoyed by women according to law. Discriminating against, maltreating, abandoning, and physically abusing women are prohibited. Article 3 The State Council shall formulate an outline for the development of Chinese women and include such outline in the national economic and social development plan. The State takes effective measures to provide necessary conditions for women to exercise their rights according to law. Article 5 The State encourages women to cultivate a sense of self-respect, self-confidence, self-reliance and self-strengthening, and to safeguard their own lawful rights and interests by utilizing law. Women shall abide by the laws of the State, respect social morality and perform their obligations prescribed by law. The trade unions and the Communist Youth League organizations shall, within the scope of their respective work, strive to safeguard the rights and interests of women. Article 10 Women have the right to conduct State affairs, manage economic and cultural undertakings and administer social affairs through various channels and in various ways. Article 11 Women enjoy the equal right, with men, to vote and to stand for election. Article 12 The State actively trains and selects female cadres. State organs, public organizations, enterprises and institutions shall, in training, selecting and appointing cadres, adhere to the principle of equality between men and women, and there shall be an appropriate number of women leading members. The State attaches great importance to the training and selection of female cadres of minority nationalities. Article 16 Schools and departments concerned shall, by implementing the relevant regulations of the State, guarantee that women enjoy equal rights with men in such aspects as starting school, entering a higher school, job assignment upon graduation, conferment of academic degrees and dispatch for study abroad. With exception of special subjects, no schools shall, in enrolling students, refuse to enroll women on the pretext of sex or raise the enrollment standards for women. Article 18 Parents or other guardians must perform their duty of ensuring that female school-age children or adolescents receive the compulsory education. The governments, society and schools shall take effective measures to solve the actual difficulties of female school-age children or adolescents in schooling and create the necessary conditions to ensure that the needy, disabled and migrant female school-age children or adolescents finish compulsory education. Article 21 State organs, public organizations, enterprises and institutions shall, by implementing relevant regulations of the State, ensure that women enjoy equal rights with men in their participation in scientific, technological, literary, artistic and other cultural activities. Article 23 With exception of the special types of work or post unsuitable to women, no unit may, in employing staff and workers, refuse to employ women by reason of sex or raise the employment standards for women. When employing female workers and staff members, the employing units shall, according to law, conclude labour or employment contracts or service agreements with them. No clauses that restrict marriage and childbearing of female workers and staff members shall be proscribed in the labour or employment contracts or the service agreements. Employing of female minors under the age of 16, except where otherwise prescribed by the State, is prohibited. Article 24 Equal pay for equal work shall be applied to men and women alike. Women shall enjoy equal rights with men in receiving welfare benefits. Article 25 In such aspects as promotion in post or in rank, evaluation and determination of professional and technological titles, the principle of equality between men and women shall be upheld and discrimination against women shall not be allowed. Women shall be under special protection during menstrual period, pregnancy, obstetrical period and nursing period. Article 27 No unit shall reduce the salaries or wages of female workers and staff members, or dismiss them, or

unilaterally cancel the labour or employment contracts or service agreements with them because they are married, pregnant, on maternity leave or breast-feeding, except where female workers and staff members request termination of the labour or employment contracts or service agreements themselves. In implementing the retirement system of the State, no unit shall discriminate against women on the pretext of sex. Article 28 The State develops social insurance, social relief, social welfare and medical and health services to guarantee that women enjoy social insurance, social relief, social welfare and health care services, and other rights and interests. The State advocates and encourages public welfare activities that aim to help women. Article 29 The State promotes a childbearing insurance system, and establishes other sound security systems relating to childbearing. Article 31 In joint property relationship derived from marriage or family, the rights and interests enjoyed by women according to law may not be infringed upon. Article 32 Women shall enjoy equal rights with men in contracted management of land, distribution of the earnings of the collective economic organizations, use of the compensations for expropriated or requisitioned land and use of housing sites in rural areas. If a man moves to the domicile of a woman for marriage, the man and his children shall enjoy equal rights and interests with the other members of the rural collective economic organizations at the place of their residence. Among the statutory successors in the same order, women shall not be discriminated against. Widowed women have the right to dispose of the property inherited by them, and no one may interfere with the disposition thereof. Article 35 Widowed women who have made predominant contributions in maintaining their parents-in-law shall be regarded as the statutory successors first in order, and their rights of succession thereto shall not be affected by inheritance in subrogation. Drowning, abandoning or cruel infanticide in any manner of female babies is prohibited; discriminating against or maltreating of women who give birth to female babies or women who are sterile is prohibited; cruel treatment causing bodily injury to or death of women by means of superstition or violence is prohibited; maltreating or abandoning of women who are ill, disabled or aged is prohibited. Article 39 Abducting of, trafficking in, or kidnapping of women is prohibited; buying of women who are abducted, trafficked in, or kidnapped is prohibited; obstructing the rescue of women who are abducted, trafficked in, or kidnapped is prohibited. No one shall discriminate against the women who are abducted, trafficked in, or kidnapped. Article 40 Sexual harassment against women is prohibited. The female victims shall have the right to file complaints with the units where they work and the departments concerned. Article 41 Prostitution or whoring shall be prohibited. Arranging for, forcing or luring women to engage in prostitution, providing shelters for prostitution, or instigating women to engage in prostitution, or acting indecently against women is prohibited. Arranging for, forcing or luring women to give obscene performances is prohibited. Article 45 A husband shall not apply for a divorce when his wife is pregnant, or is within one year after the birth of the child, or within six months after the termination of her gestation. Article 46 Domestic violence against women is prohibited. The State takes measures to prevent and stop domestic violence. The departments of public security, civil affairs, judicial administration, etc. Article 47 A woman shall enjoy equal rights with her spouse in possessing, utilizing, profiting from and disposing of the property jointly possessed by the husband and wife according to law, which shall not be affected by the status of income of either party. Where the husband and the wife agree in writing that the property acquired separately by them during the period in which their wedlock exists is owned by them likewise, and the wife has been shouldering more duties in respect of bringing up the child, taking care of the old, assisting the husband in work, etc. Article 49 Both parents enjoy the equal right to guardianship of their minor child children. Article 51 Women have the right to child-bearing in accordance with relevant regulations of the State as well as the freedom not to bear any child. Where a couple of child-bearing age practise family planning according to the relevant regulations of the State, the departments concerned shall provide safe and effective contraceptives and techniques, and ensure the health and safety of the woman receiving any birth-control operation. The State institutes a system of premarital health care and health care for the pregnant and lying-in periods and develops the maternal and infant health care undertakings. The said department or unit shall investigate and deal with the case according to law and give a reply afterwards. Article 56 Where administrative sanctions are

prescribed by other laws and regulations for the infringement upon the lawful rights and interests of women in violation of the provisions of this Law, the provisions of those laws and regulations shall prevail; where such an infringement causes loss of property or other damages, the infringer shall bear civil responsibilities according to law; if a crime is constituted, criminal responsibilities shall be investigated according to law. Where a State organ and its functionaries fail to perform their duties according to law, or fail to stop, in a timely manner, the acts infringing upon the lawful rights and interests of women or to provide the women victims with the necessary help, thus serious consequences ensue, the unit where the organ and its functionaries belong or the organ at a higher level shall, according to law, give administrative sanctions to the person directly in charge of the State organ and the other persons directly responsible. Article 61 This Law shall go into effect as of October 1,

4: Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights

From the beginning on August 28, , the English name abbreviation of National Intellectual Property Administration, PRC changed from SIPO to CNIPA. Since August 30, the new domain name www.enganchecubano.com has been officially launched on the government website of National Intellectual Property Administration, PRC.

Chapter I General Provisions Article 1 These Regulations are formulated in accordance with Customs Law of the PRC in order to implement customs protection of intellectual property rights, promote economic trade and technological and cultural exchange with foreign countries, and safeguard social interests. Article 3 The State prohibits the import and export of goods that infringe upon Intellectual Property Rights. Customs shall implement protection of Intellectual Property Rights and exercise the relevant powers stipulated in the PRC, Customs Law in accordance with the provisions of relevant laws and these Regulations. Article 4 Owners of Intellectual Property Rights that request customs to implement protection of Intellectual Property Rights shall submit an application to customs for adoption of protective measures. Article 5 Consignees of import goods or their agents, and consignors of export goods or their agents shall truthfully declare to customs the details of Intellectual Property Rights related to the import or export goods, and shall submit the relevant supporting documents. Article 6 When implementing protection of Intellectual Property Rights, customs shall maintain the confidentiality of the trade secrets of the related parties. To apply for record filing, an application form shall be submitted. An application form shall include the following particulars: Where there are supporting documents for the contents of the application form specified in the preceding paragraph, the owner of Intellectual Property Rights shall attach the supporting documents. Article 8 The General Administration of Customs shall, within 30 working days from the date of receipt of all application documents, render a decision on whether to grant approval for record filing, and shall notify the applicant in writing. Where approval for record filing is not granted, the reasons therefor shall be stated. The General Administration of Customs shall not grant approval for record filing in any of the following circumstances: Article 9 If customs discovers that an owner of Intellectual Property Rights that applies for record filing of Intellectual Property Rights has not provided the relevant details or documents truthfully, the General Administration of Customs may revoke its filed record. Where the Intellectual Property Rights are valid, the owner of the Intellectual Property Rights may, within six months prior to the expiration of the term of validity of the filed record for customs protection of Intellectual Property Rights, apply to the General Administration of Customs for an extension of the filed record. The term of validity of each extension of a filed record shall be 10 years. Where no application for extension has been made upon the expiration of the term of validity of a filed record for customs protection of Intellectual Property Rights, or the Intellectual Property Rights are no longer protected by laws or administrative regulations, the filed record for customs protection of Intellectual Property Rights shall immediately become void. Article 11 Where there is a change in the details of a filed record of Intellectual Property Rights, the owner of the Intellectual Property Rights shall, within 30 working days of the date on which the change occurs, carry out the amendment or cancellation procedures with the General Administration of Customs. Chapter III Application for Impoundment Of Goods Suspected of Infringing upon Rights, and the Handling thereof Article 12 Where an owner of Intellectual Property Rights discovers that goods suspected of infringing upon rights are about to be imported or exported, he may submit an application for impoundment of goods suspected of infringing upon rights to the customs of the place where the goods are to enter into, or exit from, China. Article 13 Where an owner of Intellectual Property Rights requests customs to impound goods suspected of infringing upon rights, he shall submit an application form and the relevant supporting documents, and shall provide evidence that is sufficient to prove that the infringement clearly exists. An application form shall include the following main particulars: Where the goods suspected of infringing upon rights are suspected of infringing upon Intellectual Property Rights that are filed for record, the application form shall also include the customs record number. Where an owner of Intellectual Property Rights pays the

fees for storage and custody directly to the storage provider, such fees shall be deducted from the guarantee. The specific procedures shall be formulated by the General Administration of Customs

Article 15 Where an owner of Intellectual Property Rights that applies for impoundment of goods suspected of infringing upon rights satisfies the provisions of Article 13 hereof and provides a guarantee in accordance with Article 14 hereof, customs shall impound the goods suspected of infringing upon rights, notify the owner of Intellectual Property Rights in writing, and deliver a certificate of impoundment by customs to the consignee or consignor. Where an owner of Intellectual Property Rights that applies for impoundment of goods suspected of infringing upon rights does not satisfy the provisions of Article 13 hereof or has not provided a guarantee in accordance with Article 14 hereof, customs shall reject the application and notify the owner of Intellectual Property Rights in writing.

Article 16 Where customs discovers import or export goods that are suspected of infringing upon Intellectual Property Rights that are filed for record, it shall notify the owner of the Intellectual Property Rights immediately in writing. Where, within three working days of the date of delivery of the notification, the owner of the Intellectual Property Rights submits an application according to Article 13 hereof and provides a guarantee according to Article 14 hereof, customs shall impound the goods suspected of infringing upon rights, notify the owner of the Intellectual Property Rights in writing, and deliver a certificate of impoundment by customs to the consignee or consignor. Where the owner of the Intellectual Property Rights fails to submit an application or provide a guarantee within the time limit, customs may not impound the goods.

Article 17 An owner of Intellectual Property Rights and the consignee or consignor may inspect the relevant goods upon the approval of customs.

Article 18 Where the consignee or consignor considers that his goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, he shall submit a written explanation to customs and attach the relevant evidence.

Article 20 If, after customs has discovered import or export goods suspected of infringing upon Intellectual Property Rights that are filed for record and has notified the owner of the Intellectual Property Rights, the owner of the Intellectual Property Rights requests customs to impound the goods suspected of infringing upon rights, customs shall, within 30 working days of the date of impoundment, investigate and confirm whether the impounded goods suspected of infringing upon rights have infringed upon Intellectual Property Rights. If it can not confirm an infringement, it shall notify the owner of the Intellectual Property Rights immediately in writing.

Article 21 Where customs conducts an investigation into the impounded goods suspected of infringing upon rights and requests the assistance of the department in charge of Intellectual Property Rights, the relevant department in charge of Intellectual Property Rights shall provide assistance. Where the department in charge of Intellectual Property Rights requests customs to provide assistance in the handling of rights infringement cases involving import and export goods, customs shall provide assistance.

Article 22 Where customs conducts an investigation into the impounded goods suspected of infringing upon rights and the relevant details, the owner of Intellectual Property Rights and the consignee or consignor shall coordinate with the investigation.

Article 24 Customs shall release the impounded goods suspected of infringing upon rights in any of the following circumstances:

Article 25 Where customs impounds goods suspected of infringing upon rights according to the provisions hereof, the owner of the Intellectual Property Rights shall pay the relevant fees for storage, custody and disposal, etc. Where the owner of the Intellectual Property Rights has not paid the relevant fees, customs may deduct such fees from the guarantee he provides to customs, or request the guarantor to perform the relevant guarantee liability. Where goods suspected of infringing upon rights are confirmed as having infringed upon Intellectual Property Rights, the owner of the Intellectual Property Rights may include the relevant fees for storage, custody and disposal, etc.

Article 26 Where customs discovers a case suspected of a criminal offence during implementation of protection of Intellectual Property Rights, it shall hand over the case to the public security authority according to law for handling.

Chapter IV Legal Liability

Article 27 Where impounded goods suspected of infringing upon rights are confirmed as having infringed upon Intellectual Property Rights after investigation by customs, customs shall confiscate the goods. After customs has confiscated the goods that have infringed upon Intellectual Property Rights, it shall notify the owner of the Intellectual Property

Rights in writing of the relevant details of such goods. Where the confiscated infringing goods can be used for social welfare, the Customs shall deliver them to the relevant social welfare institutions for promoting social welfare; where the intellectual property right holder has the intent to acquire such goods, the Customs may transfer them to the intellectual property right holder non-gratuitously. Where the confiscated infringing goods cannot be used for social welfare and the intellectual property right holder has no intent to acquire them, the Customs may lawfully auction them after eliminating the infringing features, but the imported counterfeit trademark goods with only the trademark eliminated, except in special cases, shall not be allowed to enter business; where the infringing features cannot be eliminated, the Customs shall destroy such goods. Article 28 Where, after customs has accepted an application for record filing of protection of Intellectual Property Rights and for adoption of protective measures for Intellectual Property Rights, an owner of Intellectual Property Rights cannot provide precise details and as a result, the goods infringing upon rights are not discovered, or the protective measures are not adopted in a timely manner or effectively, the owner of the Intellectual Property Rights shall bear the liability himself. Article 29 Anyone who imports or exports infringing goods, constituting a crime, shall be prosecuted for his criminal responsibility according to law. Article 30 Where the personnel of customs are derelict in their duties, abuse their authority or practise graft in their implementation of protection of Intellectual Property Rights, and a criminal offence is constituted, their criminal liability shall be pursued according to law. Where the same is insufficient to constitute a criminal offence, they shall be subjected to administrative penalty according to law. Chapter V Supplementary Provisions Article 31 Where articles carried or sent by mail by individuals into or out of China exceed the amount for personal use or the reasonable amount and infringe upon the Intellectual Property Rights stipulated in Article 2 hereof, such articles shall be treated as infringing goods. Article 32 Where an owner of Intellectual Property Rights handles record filing of his Intellectual Property Rights with the General Administration of Customs, he shall pay the fee for record filing in accordance with the relevant State provisions. Article 33 These Regulations shall be implemented as of 1 March

5: Intellectual Property Industry Standards of the People's Republic of China

The people's court, when dealing with the request mentioned in the preceding paragraph, shall apply the provisions of Article 93 through Article 96 and of Article 99 of the Civil Procedure Law of the People's Republic of China.

Article 3 The State prohibits the importation and exportation of goods which infringe intellectual property rights. Article 4 The holder of an intellectual property right, where requesting the Customs to provide protection for his intellectual property right, shall submit an application to the Customs for taking protective measures. Article 5 The consignees of import goods or their agents, and the consignors of export goods or their agents shall truthfully declare the status of intellectual property rights related to their import or export goods and present relevant evidentiary documents to the Customs in accordance with the provisions of the State. Article 6 When providing protection for intellectual property rights, the Customs shall keep the confidentiality of commercial secrets of the interested parties. Chapter II Recordation of Intellectual Property Rights Article 7 The holder of an intellectual property right may apply for recordation with the General Administration of Customs of his intellectual property right in accordance with the provisions of these Regulations; when applying for the recordation, he shall present a written application. The application shall include the following particulars: Where there are evidentiary documents in the contents of the application referred to in the preceding paragraph, the holder of the intellectual property right shall attach evidentiary documents. Article 8 The General Administration of Customs shall, within 30 working days from the date of receipt of all the application documents, make a decision on whether or not to grant the recordation and shall notify the applicant in writing; where the recordation is not granted, reasons thereof shall be explained. Under any of the following circumstances, the General Administration of Customs shall not grant the recordation: Article 9 The General Administration of Customs may revoke a recordation where the Customs finds that the holder of an intellectual property right has not truthfully provided the relevant information or documents in the course of applying for the recordation of the intellectual property right. Article 10 A recordation for customs protection of an intellectual property right shall be valid from the date on which the General Administration of Customs grants the recordation and shall be valid for a term of 10 years. The holder of the intellectual property right may apply to the General Administration of Customs for renewal of the recordation for customs protection of the intellectual property right within six months prior to the expiration of its term of validity, where the intellectual property right is valid. Each renewal of a recordation shall be valid for a term of 10 years. A recordation for customs protection of an intellectual property right shall cease to be valid immediately where no application is presented for renewal of the recordation for customs protection of the intellectual property right upon expiration of its term of validity, or where the intellectual property right is no longer protected under laws or administrative regulations. Article 11 Where there is any change in respect of a recorded intellectual property right, the holder of the intellectual property right shall go through the procedures of modification or cancellation of recordation with the General Administration of Customs within 30 working days from the date of occurrence of such change. Chapter III Application for Detention of Suspected Infringing Goods and Disposal Thereof Article 12 Where discovering the suspected infringing goods pending importation or exportation, the holder of an intellectual property right may present an application with the Customs at the port of entry or exit for detaining such goods. Article 13 Where requesting the Customs to detain the suspected infringing goods, the holder of an intellectual property right shall present a written application and relevant evidentiary documents, and provide as well any evidence that sufficiently proves the obvious existence of the fact of infringement. An application shall mainly include the following particulars: The application shall include the number of customs recordation in addition where the goods are suspected of infringing a recorded intellectual property right. Article 14 Where requesting the Customs to detain the suspected infringing goods, the holder of an intellectual property right shall provide the Customs with a security not exceeding or equivalent to the value of the goods to cover the possible compensation for the

losses suffered by the consignee or consignor due to an improper application, and the payment of the expenses of warehousing, maintenance and disposal of the goods incurred after being detained by the Customs. The corresponding amount shall be deducted from the security where the holder of the intellectual property right makes a direct payment of the expenses of warehousing and maintenance to the warehousing entity. Specific measures therefor are formulated by the General Administration of Customs. Article 15 Where the holder of an intellectual property right has applied for detention of the suspected infringing goods in conformity with the provisions of Article 13 of these Regulations and provided a security in conformity with the provisions of Article 14 of these Regulations, the Customs shall detain the suspected infringing goods, notify the holder of the intellectual property right in writing of the detention and serve the consignee or consignor with a Customs Detention Receipt. Where the holder of an intellectual property right fails to comply with the provisions of Article 13 of these Regulations when applying for detaining the suspected infringing goods, or fails to comply with the provisions of Article 14 of these Regulations when providing a security, the Customs shall refuse the application and notify the holder of the intellectual property right in writing of such refusal. Article 16 Where discovering any import or export goods suspected of infringing a recorded intellectual property right, the Customs shall immediately notify the holder of the intellectual property right in writing of such suspected infringement. Where the holder of the intellectual property right presents an application in conformity with the provisions of Article 13 of these Regulations and provides a security in conformity with the provisions of Article 14 of these Regulations within three working days from the date of service of the notification, the Customs shall detain the suspected infringing goods, notify the holder of the intellectual property right in writing of such detention and serve a Customs Detention Receipt on the consignee or consignor. The Customs shall not detain the goods where the holder of the intellectual property right fails to present an application or to provide a security within the period. Article 17 With consent of the Customs, the holder of an intellectual property right and the consignor or consignee may inspect the relevant goods. Article 18 Where believing that his goods have not infringed the right of the holder of an intellectual property right, the consignee or consignor shall present a written explanation to the Customs as well as the relevant evidence. Article 19 Where believing that his import or export goods have not infringed a patent, the consignee or consignor of the goods suspected of infringing the patent may request the Customs to release the goods after providing the Customs with a security equivalent to the value of such goods. Article 20 Where the holder of an intellectual property right requests the Customs to detain the suspected infringing goods after the Customs discovers the import or export goods suspected of infringing the recorded intellectual property right and notifies the holder of the intellectual property right of such suspected infringement, the Customs shall carry out an investigation and make, within 30 working days from the date of detention, a determination as to whether the suspected infringing goods under detention have infringed the intellectual property right; where the determination cannot be made, the Customs shall immediately notify the holder of the intellectual property right in writing. Article 21 Where the Customs, when carrying out an investigation on the suspected infringing goods which have been detained, requests any assistance from the competent intellectual property authority, the relevant competent intellectual property authority shall provide such assistance. Where the competent intellectual property authority, when handling a case of infringement involving import or export goods, requests any assistance from the Customs, the Customs shall provide such assistance. Article 22 When the Customs carries out an investigation on the suspected infringing goods under detention and other details of the case, both the holder of the intellectual property right and the consignee or consignor shall provide cooperation. Article 24 The Customs shall release the detained suspected infringing goods under any of the following circumstances: Article 25 Where the Customs detains the suspected infringing goods in accordance with the provisions of these Regulations, the holder of an intellectual property right shall make the payment of the relevant expenses for warehousing, maintenance and disposal of the goods. Where the holder of the intellectual property right fails to make such payment, the Customs may deduct it from the security he provided to the Customs or require the guarantor to perform the relevant duty of guarantee. Where the suspected infringing goods are determined to have infringed

an intellectual property right, the holder of the intellectual property right may claim the paid expenses for warehousing, maintenance and disposal as reasonable expenses incurred in halting the infringement. Article 26 Where discovering any suspected criminal offence in providing protection for intellectual property rights, the Customs shall hand the case over to the public security authorities for handling according to law. Chapter IV Legal Liability Article 27 The suspected infringing goods under detention shall be confiscated by the Customs where such goods are determined to have infringed an intellectual property right by the Customs after investigation. After confiscating the goods infringing an intellectual property right, the Customs shall notify the holder of the intellectual property right in writing of the information related to the goods of infringement. Where the confiscated goods infringing an intellectual property right can be used for public welfare undertakings, the Customs shall hand such goods over to the relevant public welfare bodies for use in public welfare undertakings; where the holder of the intellectual property right intends to purchase the goods, the Customs may have such goods assigned to the holder of the intellectual property right with compensation. Where the confiscated goods infringing an intellectual property right cannot be used for public welfare undertakings or the holder of the intellectual property right has no intention to purchase the goods, the Customs may have such goods auctioned according to law after removing their infringing features; where the infringing features cannot be removed, the Customs shall destroy the goods. Article 28 The articles carried on person, or posted, into or out of the territory shall be confiscated by the Customs if the quantity of such articles exceeds the reasonable limit for personal use and such articles have infringed any intellectual property right provided for by Article 2 of these Regulations. Article 29 Where the Customs, after accepting an application for recording an intellectual property right or for adopting protective measures for an intellectual property right, fails to discover the infringing goods or to adopt timely protective measures, or adopts protective measures ineffectively, due to the failure on the part of the holder of the intellectual property right to provide exact information, the holder of the intellectual property right shall take full responsibility for the consequences. Article 30 Where the importation or exportation of goods infringing an intellectual property right constitutes a crime, criminal liability shall be investigated according to law. Article 31 Any Customs officer who neglects his duty, abuses powers, or commits illegalities for personal gains or by fraudulent means in providing protection for intellectual property rights shall be investigated for criminal liability according to law if a crime is constituted; if the act has not constituted a crime, an administrative sanction shall be imposed according to law. Chapter V Supplementary Provisions Article 32 Where recording an intellectual property right with the General Administration of Customs, the holder of the intellectual property right shall pay a recordation fee in accordance with relevant provisions of the State. Article 33 These Regulations shall be effective as of March 1,

6: Criminal Law of the People's Republic of China -- www.enganchecubano.com

4 Patent Law of the People's Republic of China, supra note 3. 5 The most important objectives of intellectual property rights laws are "to promote research and development and to encourage the disclosure of inventions so that others can.

Chapter I Basic Principles Article 1 This Law is enacted in accordance with the Constitution for the purpose of upholding the basic economic system of the State, maintaining the order of the socialist market economy, defining the attribution of things, giving play to the usefulness of things and protecting the property right of obligees. Article 2 This Law shall be applicable to civil relationships stemming from attribution and use of things. For the purposes of this Law, things include the immovables and the movables. Where laws stipulate that rights are taken as objects of the property right, the provisions of such laws shall prevail. The property right mentioned in this Law means the exclusive right enjoyed by the obligee to directly dominate a given thing according to law, which consists of the right of ownership, the usufruct and the security interest on property. Article 3 In the primary stage of socialism, the State upholds the basic economic system under which public ownership is dominant and the economic sectors of diverse forms of ownership develop side by side. The State consolidates and develops the public sectors of the economy, and encourages, supports and guides to the development of the non-public sectors of the economy. The State maintains a socialist market economy and guarantees the equal legal status and the right to development of all the mainstays of the market. Article 4 The property right of the State, the collectives, the individual persons and other obligees are protected by law, and no units or individuals shall encroach on it. Article 5 The categories and contents of the property right shall be stipulated by law. Article 6 The creation, alteration, transfer or extinction of the property right of the immovables shall be registered in accordance with the provisions of law. The property right of the movables shall be created or transferred upon delivery in accordance with the provisions of law. Article 7 The law shall be observed and social ethics shall be respected in acquiring or exercising the property right and public interests and the lawful rights and interests of another person shall not be jeopardized. Article 8 Where other laws specially provide for the property right otherwise, the provisions there shall prevail. Chapter II Creation, Alteration, Transfer and Extinction of the Property Right Section 1 Registration of the Immovables Article 9 The creation, alteration, transfer or extinction of the property right shall become valid upon registration according to law; otherwise it shall not become valid, unless otherwise provided for by law. Registration of ownership of all the natural resources which are owned by the State in accordance with law may be dispensed with. Article 10 Registration of the immovables shall be handled by the registration authority at the place where they are located. The State practices a unified system of registration with respect to the immovables. The scope of unified registration, the registration authority and the measures for registration shall be stipulated by law and administrative regulations. Article 11 To apply for registration, the party concerned shall, on the basis of the different matters for registration, submit the certificate of the attribution of right and the necessary materials on boundary and the area of the immovables, etc. Article 12 The registration authority shall perform the following duties: Where further certification of the condition of the immovables, the registration of which is applied for, is needed, the registration authority may require the applicant to supplement the materials and may, when necessary, check them on the spot. Article 13 The registration authority shall not do any of the following: Article 14 Where the creation, alteration, transfer and extinction of the property right of the immovables are required to be registered according to the provisions of law, they shall become valid as of the time when they are entered in the register of the immovables. Article 15 The contract made between the parties concerned on the creation, alteration, transfer or extinction of the property right of the immovables shall become valid as of the time when the contract is concluded, unless otherwise provided for by law or agreed upon in the contract; and where the property right is not registered, it shall not affect the validity of the contract. Article 16 The register of the immovables provides the basis for the attribution and contents of the property right. The register of the immovables shall be kept by the registration authority. Article 17 The right

attribution certificate of the immovables is the proof that the obligee is entitled to the property right of the said immovables. The items recorded in the right attribution certificate of the immovables shall be consistent with what is recorded in the register of the immovables; and in case of inconsistencies, what is recorded in the register of the immovables shall be taken as the standard unless there is evidence to prove that there are errors in what is recorded in the register of the immovables. Article 18 The obligee or the interested party may apply for consulting and duplicating the registered information, and the registration authority shall provide such materials accordingly. Article 19 Where the obligee or the interested party believes that there are errors in what is recorded in the register of the immovables, he may apply for correction. Where the obligee recorded in the register of the immovables agrees in written form to make corrections or there is evidence to prove that there are definitely errors in the registration, the registration authority shall make corrections accordingly. Where the obligee recorded in the register of the immovables disagrees on making corrections, the interested party may apply for the registration of disagreement. Where the registration authority registers the disagreement, the applicant in question fails to file a lawsuit within 15 days from the date the disagreement is registered, such a registration shall become invalid. If damages are caused to the obligee due to inappropriate registration of disagreement, the obligee may request the applicant to make compensation. Article 20 When the party concerned intends to sign an agreement on the purchase or sale of a house or other property right of immovables, he may, in accordance with what is agreed upon, apply to the registration authority in advance for registration, in order to ensure the realization of his property right in future. Where after the registration is made in advance, such immovables are disposed of without the consent of the obligee who is recorded in the registration in advance, the property right of such immovables shall be invalid. Article 21 Where the party concerned submits false materials when applying for registration, thus causing damages to another person, he shall be liable for compensation. Where damages are caused to another person due to the errors made in registration, the registration authority shall be liable for compensation. After making the compensation, the said authority may have recourse to the person who makes the errors in registration. Article 22 Charges for registration of the immovables shall be collected piece by piece and shall not be collected on the basis of the areas or sizes of the immovables or in proportion to the purchase prices. The specific rates for the charges shall be prescribed by relevant department under the State Council together with the department of pricing.

Section 2 Delivery of the Movable Article 23 The creation or transfer of the property right of the movables shall become valid as of the time of their delivery, unless otherwise provided for by law. Article 24 Before registration, the creation, alteration, transfer or extinction of the property right of the vessels, aircraft, motor vehicles, etc. Article 25 Where an obligee has already possessed the movables according to law prior to the creation or transfer of the property right of such movables, the property right shall become valid as of the time when such legal act becomes effective. Article 26 Where a third party has taken possession of the movables according to law prior to the creation or transfer of the property right of the said movables, the person who is obligated to deliver the movables may do so, instead, through transferring the right of requesting the third party to return the original movables. Article 27 Where both parties agree that the transferor continues to possess the movables while the property right of such movables is being transferred, the said property right shall be valid as of the time when the said agreement becomes effective. Article 29 Where the property right is obtained through inheritance or acceptance of legacy, such property right shall become valid as of the time of inheritance or acceptance of legacy. Article 30 Where the property right is created or extinguishes due to such factual acts as lawful construction and demolition of houses, such property right shall become valid as of the time when the factual acts are achieved. Article 31 Where a person enjoys the property right over the immovables in accordance with the provisions of Articles 28 through 30 of this Law, and registration is required according to the provisions of laws, when such property right is disposed of, the property right shall be invalid if no registration is made.

Chapter III Protection of the Property Right Article 32 Where the property right is encroached on, the obligee may have the matter settled by means of conciliation, mediation, arbitration or litigation. Article 33 Where a dispute arises over the attribution or contents of the property right,

the interested parties may request confirmation of their right. Article 34 Where a person takes possession of the immovables or movables without the right to do so, the obligee may request return of the original immovables or movables. Article 35 Where the property right is impaired or is likely to be impaired, the obligee may request removal of such impairment or elimination of the potential danger. Article 36 Where the immovables or movables are damaged or destroyed, the obligee may request repairs, reconstruction or remaking, replacement or restoration to their original state. Article 37 Where the infringement of the property right causes damages to an obligee, the obligee may request compensation for the damages and may also request the infringing party to assume other civil liabilities. Article 38 The forms for protection of the property right as provided for in this Chapter may be applied separately and may also be applied otherwise, depending on the circumstances of infringement. Apart from bearing civil liability for infringement on the property right, a person who, in addition, violates the administrative provisions shall bear administrative liability according to law; and if a crime is constituted, he shall be investigated for criminal liability according to law. Part Two Chapter IV General Stipulations Article 39 Owners of immovables or movables shall be entitled to possess, use, benefit from and dispose of the immovables or movables according to law. Article 40 On their own immovables or movables, owners shall have the right to create usufruct and security interest. In exercising their rights, the usufructuaries or guarantors shall not impair the rights and interests of the owners. Article 41 No units or individuals shall be allowed to acquire ownership of the immovables and movables which are exclusively owned by the State as are provided for by law. Article 42 For public interests, land owned by the collectives, and the houses and other immovables of units and individuals may be expropriated within the limits of power and in compliance with the procedures provided for by law. Where land owned by the collective is expropriated, such fees as compensations for the land expropriated, subsidies for resettlement and compensations for the attachments and the young crops on land shall be paid in full according to law, and the premiums for social insurance of the farmers whose land is expropriated shall be arranged in order to guarantee their daily lives and safeguard their lawful rights and interests. Where houses and other immovables of units or individuals are expropriated, compensations for their resettlement shall be paid according to law, and their lawful rights and interests shall be protected; and where the housings of individuals are expropriated, their living conditions shall be guaranteed. No units or individuals shall embezzle, misappropriate, privately divide, withhold or default on payment of such fees as the compensations for expropriation. Article 43 The State provides cultivated land with special protection through strictly restricting the transformation of the farmland into land for construction and keeping under control the total amount of land used for construction. No land owned by the collectives shall be expropriated in violation of the limits of power and in compliance with the procedures as provided for by law. Article 44 In order to meet such urgent needs as rushing to rescue or providing disaster relief, the immovables or movables of units or individuals may be requisitioned within the limits of power and in compliance with the procedures as provided for by law. After the use of the requisitioned immovables or movables, they shall be returned to the units or individuals whose immovables or movables are requisitioned. Where the immovables or movables of units or individuals are requisitioned or if they are damaged or lost thereafter, compensations shall be made therefor. Chapter V Ownership of the State, the Collective and the Individual Person Article 45 The property owned by the State as is provided for by law belongs to the State, that is, the entire people. The State Council shall exercise ownership of State-owned property on behalf of the State; and where laws provide for otherwise, the provisions there shall prevail. Article 46 All mineral resources, waters and sea areas belong to the State. Article 47 Land in the cities belongs to the State. Land in the rural and suburban areas which belongs to the State as is provided for by law is owned by the State. Article 48 Such natural resources as forests, mountains, grasslands, wasteland and tidal flats belong to the State, except where they belong to the collectives as is provided for by law. Article 49 All resources of the wildlife that belong to the State, as is provided for by law, are owned by the State. Article 50 All resources of radio-frequency spectrum belong to the State. Article 51 All cultural relics that belong to the State, as is provided for by law, are owned by the State. Article 52 All assets for national defense belong to the

State. All infrastructures such as railways, highways, power facilities, telecommunications facilities and oil and gas pipelines that belong to the State in accordance with the provisions of law are owned by the State. Article 53 Government departments are entitled to possess and use the immovables and movables directly under their control and to dispose of them in accordance with laws and the relevant regulations of the State Council. Article 54 Institutions sponsored by the State shall have the right to possess and use the immovables and movables directly under their control and to benefit from and dispose of them in accordance with laws and the relevant regulations of the State Council. Article 56 The property owned by the State shall be protected by law, and illegal possession, looting, privately dividing, withholding or destruction of such property by any units or individuals shall be prohibited. Article 57 The authority performing the duties of administration and supervision over State-owned property and its staff members shall, according to law, exercise vigorous administration and supervision over State-owned property, promote the preservation and increase of the value of such property, and prevent its loss; and where losses are caused to State-owned property due to their abuse of power or dereliction of their duties, they shall bear legal liability according to law. Where, in violation of the provisions governing the management of State-owned property, losses are caused to such property due to transferring it at a low price, privately dividing it in conspiracy with other persons, creating security on it without authorization or by other means in the course of enterprise restructuring, merger or division, affiliated transaction, etc. Article 58 The immovables and movables owned by the collective include the following: Article 59 The immovables and movables collectively owned by the farmers belong to the members of the collective. The following matters shall be subject to decision by the members of a given collective in accordance with the statutory procedure: Article 60 With respect to the land, forests, mountains, grasslands, wasteland, tidal flats, etc. Article 61 With respect to the immovables and movables owned by a collective of a town or township, the said collective shall, in accordance with the provisions of laws and administrative regulations, have the right to possess, use, benefit from and dispose of such immovables and movables. Article 63 The property owned by the collective shall be protected by law, and illegal possession, looting, privately sharing, and destruction of such property by any units or individuals shall be prohibited. Article 64 All individual persons shall be entitled to enjoy ownership of such immovables and movables as their lawful incomes, houses, articles for daily use, tools of production, and raw and semi-finished materials. Article 65 The lawful savings and investments of individual persons and the gains derived there from are protected by law. The State protects, in accordance with the provisions of law, the right of individual persons to inheritance and their other lawful rights and interests. Article 66 The lawful property of individual persons is protected by law, and illegal possession, looting and destruction of such property by any units or individuals are prohibited. Article 67 The State, the collective or the individual person may, in accordance with law, invest to establish companies with limited liability, companies limited by shares or other enterprises. Article 68 An enterprise legal person has the right to possess, use, benefit from and dispose of his immovables and movables in accordance with laws and administrative regulations as well as the articles of association.

7: Intellectual property in China - Wikipedia

Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights () Regulations on Technology Import and Export Administration of the People's Republic of China ().

August, Social and Cultural Background Until , China was a monarchy and all rules and regulations were set by the imperial court. The revolution of gave birth to the Republic of China. Among many changes were the development of new laws and regulations. Most of these laws were derived from European laws. Among these new laws were some hints of protection for intellectual property rights IPR. However, the country became unstable in the late s and little attention was paid to the legal system. After years of civil war, the Communist Party officially took over the government of China in Effectively, most previous rules and regulations were abolished, especially the right to own private property and adherence to the commercial laws. These actions, of course, were in line with the tenets of the Manifesto. Intellectual property rights were even less important during this period. Although elimination of the right to own private property did not appeal to most Chinese people, hardly anyone cared about the lack of IPR. This general lack of interest in IPR had deep roots in Chinese culture. Since the 12th century and evolvement of Neo-Confucianism 12th and 13th century , stealing knowledge was not only not a crime, but also perfectly acceptable. Copying, imitating, and plagiarism were encouraged. It is true that for the short period of time when China was a republic there was some interest in promoting IPR, but the interest quickly dissipated for two reasons: IPR was both against the grain of Chinese culture and the tenets of the Manifesto. In , when the first economic reform was introduced by the central government, many commercial laws were either reintroduced from the republican era or were written for the first time. Among these laws, some basic IPR was also introduced. Current legal and legislative attitudes The PRC gradually has realized that the only way to attract new foreign technology and investment into the country is to provide adequate protection for such technology, and such protection can only be provided through proper laws and effective enforcement of such laws. In , the PRC, in order to give more credibility to its new legislative efforts and convince foreign entities as to the safety of their technology, also joined the World Intellectual Property Organization WIPO. Among the most controversial items were CDs and movies. Finally, in , after extended negotiations, the US and the PRC signed a very loose memorandum of understanding to provide some protection for Americans who were considering entering the PRC market. Like all issues between the two countries, IPR issues were heavily politicized in both countries and, therefore, IPR regulations were difficult to implement. Finally, after several years of further negotiations, a more comprehensive Sino-US IPR Agreement was reached in giving fairly good protection to American-owned intellectual properties. This agreement provides, among other things, the same protection to a well-known trademark, but unregistered, as to the registered trademarks. As a general rule, it is very significant event when the PRC agrees to join a treaty or enter into an agreement with another nation because the Chinese courts readily set aside domestic law and rely on such agreements. For example, in the case of Walt Disney Productions vs. Beijing Publisher and Co. Therefore, at any given time, there may be new laws or regulations that may adversely affect IPR holders. I will try to identify the more important of these agencies that IPR holders may have to deal with in the process of obtaining the protection of law for their IPR. To begin with, I advise that the holder register its right as soon as possible because in the PRC even a simple contract between two parties is not valid unless it is recorded with the appropriate agency. In general intellectual property in PRC is divided into three main categories: It further encourages trademark owners to protect the interests of consumers, producers, and operators, as well as promote development of the socialist market economy. In fact, Chapter 1, Article 7, states that the trademark holder is held liable for the quality of goods for which the said trademark is used. Legal or real entities who wish to apply for trademark registration must be aware that certain trademarks may not be registered. These items are described in Chapter 1, Article One of the important parts is that if the trademark is not distinctive, it can not be registered. In addition, it is highly

recommended that entities seeking trademark registration use a designated trademark agent. There are two ways to register a trademark: Domestic registration takes anywhere from 18 to 24 months, and it is good for 10 years. If there is no opposition, the trademark registration certificate will be issued. It states, in summary, that Patent Law is intended to promote science and technology and to protect the inventions-creations. Article 19, Patent Law, is a critical article for any foreigner who is not a resident of the PRC and desires to apply for a patent or even discuss any patent issue: Article 22, Patent Law, states that, in order for an invention or utility model be considered for patent, such invention or utility model must be novel, new and practical. Article 25, Patent Law, imposes certain restrictions on obtaining a patent. The most important of these restrictions states that no patent will be issued for scientific discoveries, diagnostic methods or treatments of diseases, or for products or by-products obtained from nuclear activities. Furthermore, the requirements and restrictions for patenting utility designs resemble the requirements and restrictions for obtaining a trademark. The spirit of CR Law is clearly reflected in Article 1. And, as usual, such works must be in line with the spirit of socialism. There are interesting elements in CR Law, such as: The right of compiler: A compiler may enjoy the protection of copyright registration if his work does not prejudice the individual copyright holders. The right of employee in regards to the work he developed: The employee enjoys the right of authorship, but the employer reaps the benefit. The copyright, in general, may be limited to a geographical area. The owner of a copyright, under CR Law, enjoys two different types of rights: Moral rights include, but are not limited to, the right to claim ownership, the right to publish, and the right to change the work or stop anyone from changing it. Economic rights include, but are not limited to, the right to reproduce and distribute such reproduction, the right to assign temporarily or permanently and collect money for such assignment, the right to translate, and the right to compile. There are some limitations and exemptions to copyright privileges. These include, but not limited to, the private use of published work, reprint or rebroadcast by mass media, use by teachers or in research in small quantities, dissemination if it is free of charge, and translation into other Chinese dialects. Infringement Infringement and Damages: Infringement has not been clearly defined, but it is considered to be any action by the wrong doer that violates the rights granted to the intellectual property holder. For example, in the case of a patent violation, it would be an infringement if one builds a widget similar to a patented widget; in case of a trademark violation, it would be an infringement if one uses a mark identical to a registered trademark. However, there are exceptions to such infringement that hold true for all IPR. A violation of IPR may be considered a criminal act depending on the amount of money and seriousness of the event surrounding the infringement. For example, in an infringement upon a registered copyright, if the illegal gain is substantial, the wrongdoer may be imprisoned for between 3 to 7 years and be forced to make financial retribution. Pretrial injunctive relief has been made available for IPR infringement issues. The injunction usually is issued 48 hours after filing. The defendant has a limited time to appeal the injunction. The statute of limitation for filing a law suit for infringement upon a registered IPR is two years from the date of discovery. For example, in the case of a process patent, it is difficult to decide how much change in a given process is needed in order for the act not to be considered an infringement of the patent of the said process. The burden of proof in patent infringement cases varies depending on the type of the patent. In the case of a process patent, the burden of proof is on the infringer. In such cases, the infringer must present evidence to the authorities that his process is different from the patented one at dispute. However, in the case of a utility model patent, the burden is shifted to the patent holder and the authority may ask the patentee for his research papers to prove his patent has been infringed. However, in the case of an entity using a patented box and filling it with inferior material, the damages could be assessed at three times more than the illegal gain by the guilty party. In addition, sometimes the authorities impose penalties equal to the ill-gotten profit or losses incurred by the patentee, or even measure the damages by calculating a royalty loss. CR Law extensively outlines what constitutes infringement upon a registered copyright. These include, but are not limited to: The damage granted to plaintiff is either the actual damage incurred by the plaintiff or the amount of illegal gain by the infringer. The Trademark Law is fairly clear as to what constitutes infringement upon a registered

trademark: Unauthorized use of a trademark identical to the registered trademark used for identical or similar goods Knowingly selling goods with a counterfeit trademark Unauthorized creation of a replica of a registered trademark for sale to a third party Unauthorized sale of the registered trademark to a third party Unauthorized replacement of a registered trademark for the purpose of sale of goods bearing such replaced trademark Misleading the public by unauthorized use of a registered trademark for the sale of similar product Aiding a third party to infringe upon a registered trademark. The damage granted to the plaintiff is either the actual damage incurred by the plaintiff or the amount of illegal gain by the infringer. There is no law against contributory infringement. For example, party A draws pieces of a symbol that is registered, but never puts them together. He then sells the drawing to party B who assembles the pieces from the drawing and makes the symbol. In such a case, party A has committed contributory infringement upon the registered symbol. The plaintiff can negotiate with the other party: It is the Chinese way to try to settle disputes between parties by negotiation, or, as they call it, by consultation, if at all possible. If the negotiation fails: These offices have far-reaching authority, from mediating and arbitrating, to issuing an order. AND, if such an order is not complied with, the respective office will take the matter to court. The advantage of referring disputes to these offices is that the offices have more technically knowledgeable people on the staff with better understanding of the nuances of the dispute. The plaintiff can file a law suit directly with the court: The plaintiff may simply file a law suit in the region where the dispute has taken place. The government also has set up special IPR courts in certain large cities, such as Shanghai and Beijing. These cases vary from Chinese entities against other Chinese entities, foreign companies against Chinese entities, Chinese companies against foreign companies, two foreign companies against each other, and even foreign companies against Chinese IPR administrative authorities. Hitachi, Sometimes the parties follow two different routes to the same end. For example, they may file with the court and also try to negotiate at the same time.

8: Celebrity Lists » peoples republic of china intellectual property law

The Property Law of the People's Republic of China (Chinese: 中华人民共和国商标法; pinyin: Zhōnghuá Rénmín Gònghéguó Wǎngquán Fǎ) is a property law adopted by the National People's Congress in that went into effect on October 1,

General Provisions Article 1. This Law is enacted for the purposes of improving the administration of trademarks, protecting the exclusive right to use trademarks, and of encouraging producers and operators to guarantee the quality of their goods and services and maintaining the reputation of their trademarks, with a view to protecting the interests of consumers, producers and operators and to promoting the development of the socialist market economy. The Trademark Office of the administrative authority for industry and commerce under the State Council shall be responsible for the registration and administration of trademarks throughout the country. The Trademark Review and Adjudication Board, established under the administrative authority for industry and commerce under the State Council, shall be responsible for handling matters of trademark disputes. Registered trademarks mean trademarks that have been approved and registered by the Trademark Office, including trademarks, service marks, collective marks and certification marks; the trademark registrants shall enjoy the exclusive right to use the trademarks, and be protected by law. Said collective marks mean signs which are registered in the name of bodies, associations or other organisations to be used by the members thereof in their commercial activities to indicate their membership of the organisations. Said certification marks mean signs which are controlled by organisations capable of supervising some goods or services and used by entities or individual persons outside the organisation for their goods or services to certify the origin, material, mode of manufacture, quality or other characteristics of the goods or services. Regulations for the particular matters of registration and administration of collective and certification marks shall be established by the administrative authority for industry and commerce under the State Council. Any natural person, legal entity or other organisation intending to acquire the exclusive right to use a trademark for the goods produced, manufactured, processed, selected or marketed by it or him, shall file an application for the registration of the trademark with the Trademark Office. Any natural person, legal entity or other organisation intending to acquire the exclusive right to use a service mark for the service provided by it or him, shall file an application for the registration of the service mark with the Trademark Office. The provisions set forth in this Law concerning trademarks shall apply to service marks. Two or more natural persons, legal entities or other organisations may jointly file an application for the registration for the same trademark with the Trademark Office, and jointly enjoy and exercise the exclusive right to use the trademark. As for any of such goods, as prescribed by the State, that must bear a registered trademark, a trademark registration must be applied for. Where no trademark registration has been granted, such goods cannot be marketed. Any user of a trademark shall be responsible for the quality of the goods in respect of which the trademark is used. The administrative authorities for industry and commerce at different levels shall, through the administration of trademarks, stop any practice that deceives consumers. In respect of any visual sign capable of distinguishing the goods or service of one natural person, legal entity or any other organisation from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of colours, and their combination, an application may be filed for registration. Any trademark in respect of which an application for registration is filed shall be so distinctive as to be distinguishable, and shall not conflict with any prior right acquired by another person. A trademark registrant has the right to use the words of "registered trademark" or a symbol to indicate that his trademark is registered. The following signs shall not be used as trademarks: Where a trademark using any of the above-mentioned geographical names has been approved and registered, it shall continue to be valid. The following signs shall not be registered as trademarks: The signs under the preceding paragraphs may be registered as trademarks where they have acquired the distinctive features through use and become readily identifiable. Where an application is filed for

registration of a three-dimensional sign as a trademark, any shape derived from the goods itself, required for obtaining the technical effect, or giving the goods substantive value, shall not be registered. Where a trademark in respect of which the application for registration is filed for use for non-identical or dissimilar goods is a reproduction, imitation or translation of the well-known mark of another person that has been registered in China, misleads the public and is likely to create prejudice to the interests of the well-known mark registrant, it shall be rejected for registration and prohibited from use. Account shall be taken of the following factors in establishment of a well-known mark: Where any agent or representative registers, in its or his own name, the trademark of a person for whom it or he acts as the agent or representative without authorisation therefrom, and the latter raises opposition, the trademark shall be rejected for registration and prohibited from use. Where a trademark contains a geographic indication of the goods in respect of which the trademark is used, the goods is not from the region indicated therein and it misleads the public, it shall be rejected for registration and prohibited from use; however, any trademark that has been registered in good faith shall remain valid. The geographic indications mentioned in the preceding paragraph refer to the signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality, reputation or other features as mainly decided by the natural or cultural factors of the regions. Any foreign person or foreign enterprise intending to apply for the registration of a trademark or for any other matters concerning a trademark in China shall appoint any of such organisations as designated by the State to act as its or his agent.

Application for Trademark Registration Article An applicant for the registration of a trademark shall, in a form, indicate, in accordance with the prescribed classification of goods, the class of the goods and the designation of the goods in respect of which the trademark is to be used. Where any applicant for registration of a trademark intends to use the same trademark for goods in different classes, an application for registration shall be filed in respect of each class of the prescribed classification of goods. Where a registered trademark is to be used in respect of other goods of the same class, a new application for registration shall be filed. Where the sign of a registered trademark is to be altered, a new registration shall be applied for. Where, after the registration of a trademark, the name, address or other registered matters concerning the registrant change, an application regarding the change shall be filed. Anyone claiming the right of priority according to the preceding paragraph shall make a statement in writing when it or he files the application for the trademark registration, and submit, within three months, a copy of the application documents it or he first filed for the registration of the trademark; where the applicant fails to make the claim in writing or submit the copy of the application documents within the time limit, the claim shall be deemed not to have been made for the right of priority. Where a trademark is first used for goods in an international exhibition sponsored or recognised by the Chinese Government, the applicant for the registration of the trademark may enjoy the right of priority within six months from the date of exhibition of the goods. Anyone claiming the right of priority according to the preceding paragraph shall make a claim in writing when it or he files the application for the registration of the trademark, and submit, within three months, documents showing the title of the exhibition in which its or his goods was displayed, proof that the trademark was used for the goods exhibited, and the date of exhibition; where the claim is not made in writing, or the proof documents not submitted within the time limit, the claim shall be deemed not to have been made for the right of priority. The matters reported and materials submitted in the application for trademark registration shall be true, accurate and complete.

Examination for and Approval of Trademark Registration Article Where a trademark the registration of which has been applied for is in conformity with the relevant provisions of this Law, the Trademark Office shall, after examination, preliminarily approve the trademark and publish it. Where a trademark the registration of which has been applied for is not in conformity with the relevant provisions of this Law, or it is identical with or similar to the trademark of another person that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark. Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval, after examination, and the publication shall be made

for the trademark which was first filed. Where applications are filed on the same day, the preliminary approval, after examination, and the publication shall be made for the trademark which was the earliest used, and the applications of the others shall be refused and their trademarks shall not be published. Any person may, within three months from the date of the publication, file an opposition against the trademark that has, after examination, been preliminarily approved. If no opposition has been filed after the expiration of the time limit from the publication, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published. An application for the registration of a trademark shall not create any prejudice to the prior right of another person, nor unfair means be used to pre-emptively register the trademark of some reputation another person has used. Where the application for registration of a trademark is refused and no publication of the trademark is made, the Trademark Office shall notify the applicant of the same in writing. Where the applicant is dissatisfied, he may, within fifteen days from receipt of the notice, file an application with the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing. Where an opposition is filed against the trademark that has, after examination, been preliminarily approved and published, the Trademark Office shall hear both the opponent and applicant state facts and grounds, and shall, after investigation and verification, make a decision. Where any party is dissatisfied, it or he may, within fifteen days from receipt of the notification, apply for a reexamination, and the Trademark Review and Adjudication Board shall make a decision and notify both the opponent and applicant in writing. Where the interested party does not, within the statutory time limit, apply for the reexamination of the adjudication by the Trademark Office or does not institute legal proceedings in respect of the adjudication by the Trademark Review and Adjudication Board, the adjudication takes effect. Where the opposition cannot be established upon adjudication, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published; where the opposition is established upon adjudication, the registration shall not be approved. Where the opposition cannot be established upon adjudication, but the registration is approved, the time of the exclusive right the trademark registration applicant has obtained to use the trademark is counted from the date on which the three months expires from the publication of the preliminary examination. Any application for trademark registration and trademark reexamination shall be examined in due course. Where any trademark registration applicant or registrant finds any obvious errors in the trademark registration documents or application documents, it or he may apply for correction thereof. The Trademark Office shall ex officio make the correction according to law and notify the interested party of the correction. The error correction mentioned in the preceding paragraph shall not relate to the substance of the trademark registration documents or application documents. The period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration. Where the registrant intends to continue to use the registered trademark beyond the expiration of the period of validity, an application for renewal of the registration shall be made within six months before the said expiration. Where no application therefor has been filed within the said period, a grace period of six months may be allowed. If no application has been filed at the expiration of the grace period, the registered trademark shall be cancelled. The period of validity of each renewal of registration shall be ten years. Any renewal of registration shall be published after it has been approved. Where a registered trademark is assigned, the assignor and assignee shall conclude a contract for the assignment, and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods in respect of which the registered trademark is used. The assignment of a registered trademark shall be published after it has been approved, and the assignee enjoys the exclusive right to use the trademark from the date of publication. Any trademark registrant may, by signing a trademark license contract, authorise other persons to use his registered trademark. The licensor shall supervise the quality of the goods in respect of which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods in respect of which the registered trademark is used. Where any party is authorised to use a registered trademark of another person, the name of the licensee and the origin of the goods must be indicated on the goods that bear the

registered trademark. The trademark license contract shall be submitted to the Trademark Office for record. Where a registered trademark stands in violation of the provisions of Articles 10, 11 and 12 of this Law, or the registration of a trademark was acquired by fraud or any other unfair means, the Trademark Office shall cancel the registered trademark in question; and any other organisation or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark. Where a registered trademark stands in violation of the provisions of Articles 13, 15, 16 and 31 of this Law, any other trademark owner concerned or interested party may, within five years from the date of the registration of the trademark, file a request with the Trademark Review and Adjudication Board for adjudication to cancel the registered trademark. Where a well-known mark is registered in bad faith, the genuine owner thereof shall not be restricted by the five-year limitation. In addition to those cases as provided for in the preceding two paragraphs, any person disputing a registered trademark may, within five years from the date of approval of the trademark registration, apply to the Trademark Review and Adjudication Board for adjudication. The Trademark Review and Adjudication Board shall, after receipt of the application for adjudication, notify the interested parties and request them to respond with arguments within a specified period. Where a trademark, before its being approved for registration, has been the object of opposition and decision, no application for adjudication may be filed based on the same facts and grounds. After the Trademark Review and Adjudication Board has made an adjudication either to maintain or to cancel a registered trademark, it shall notify the interested parties of the same in writing.

Administration of the Use of Trademarks Article Where any person who uses a registered trademark has committed any of the following, the Trademark Office shall order him to rectify the situation within a specified period or even cancel the registered trademark: Where a registered trademark is used in respect of the goods that have been roughly or poorly manufactured, or whose superior quality has been replaced by inferior quality, so that consumers are deceived, the administrative authorities for industry and commerce at different levels shall, according to the circumstances, order rectification of the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine, and the Trademark Office may even cancel the registered trademark. Where a registered trademark has been cancelled or has not been renewed at the expiration, the Trademark Office shall, during one year from the date of the cancellation or removal thereof, approve no application for the registration of a trademark that is identical with or similar to the said trademark. Where any person violates the provisions of Article 6 of this Law, the local administrative authority for industry and commerce shall order him to file an application for the registration within a specified period, and may, in addition, impose a fine. Where any person who uses an unregistered trademark has committed any of the following, the local administrative authority for industry and commerce shall stop the use of the trademark, order him to rectify the situation within a specified period, and may, in addition, circulate a notice of criticism or impose a fine: Any party dissatisfied with the decision of the Trademark Office to cancel a registered trademark may, within fifteen days from receipt of the corresponding notice, apply for a review. The exclusive right to use a registered trademark is limited to the trademark which has been approved for registration and to the goods in respect of which the use of the trademark has been approved. Any of the following acts shall be an infringement of the exclusive right to use a registered trademark: Where it is established that the infringing act is constituted in its handling the matter, the administrative authority for industry and commerce handling the matter shall order the infringer to immediately stop the infringing act, confiscate and destroy the infringing goods and tools specially used for the manufacture of the infringing goods and for counterfeiting the representations of the registered trademark, and impose a fine. The administrative authority for industry and commerce has the power to investigate and handle any act of infringement of the exclusive right to use a registered trademark according to law; where the case is so serious as to constitute a crime, it shall be transferred to the judicial authority for handling. When investigating and handling an act suspected of infringement of a registered trademark, the administrative authority for industry and commerce at or above the county level may, according to the obtained evidence of the suspected violation of law or informed offence, exercise the following functions and authorities: When the

administrative authority for industry and commerce exercises the preceding functions and authorities, the interested party shall cooperate and help, and shall not refuse to do so or stand in the way. The amount of damages shall be the profit that the infringer has earned because of the infringement in the period of the infringement or the injury that the infringer has suffered from the infringement in the period of the infringement, including the appropriate expenses of the infringer for stopping the infringement. Anyone who sells a goods that it or he does not know has infringed the exclusive right to use a registered trademark, and is able to prove that it or he has obtained the goods legitimately and indicates the supplier thereof shall not bear the liability for damages. Where any party uses, without the authorisation from the trademark registrant, a trademark identical with a registered trademark, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer. Where any party counterfeits, or makes, without authorisation, representations of a registered trademark of another person, or sells such representations of a registered trademark as were counterfeited, or made without authorisation, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer. Where any party sells goods that he knows bear a counterfeited registered trademark, and the case is so serious as to constitute a crime, he shall be prosecuted, according to law, for his criminal liabilities in addition to his compensation for the damages suffered by the infringer. The State functionaries for the registration, administration and reexamination of trademarks must handle cases according to law, be incorruptable and disciplined, devoted to their duties and courteous and honest in their provision of service.

9: Trademark Law Of The People's Republic Of China - Intellectual Property - China

comments copyright law and the people's courts in the people's republic of china: a review and critique of china's intellectual property courts.

General Background Information A. This multi-level legislation proceeds according to the following hierarchy: According to the Legislation Law of the PRC , the constitutional law prevails over all others laws and regulations. Laws prevail over executive regulations and other regulations, i. In turn, local regulations, rules, measures, etc. Articles 78 to 84 of the Legislation Law spell out the hierarchy of the various legislation and executive issuances while Articles 85 to 92 establish the mechanisms and bodies authorized to resolve any conflict. Judicial System The judicial power is exercised by the courts, which exist in four levels: County or district level courts. Tribunals may also be set up in accordance with local conditions. The State Council exercises unified leadership over local state administrative organs at various levels throughout the country. It regulates the specific division of power and function of the state administrative organs at the central level and the provincial autonomous regional and municipal level. The State Council may establish special administrative regions when necessary. Special administrative regions may exercise social, economic, political and cultural systems different from those on the mainland regions of PRC. Intellectual Property Legal System A. Government Regulatory Agencies 1. Provincial offices generally handle the administrative enforcement of patent complaints and the promotion of other intellectual property works. In enforcement efforts, SAIC has the power to investigate cases. When an infringement is determined, SAIC can order a cessation of the sale of infringing items and stop further infringement, as well as order the destruction of infringing marks or products, impose fines, and remove machines used to produce counterfeit goods. National Copyright Administration NCAC NCAC is responsible for copyright administration and enforcement, including of drafting the outline of national copyright strategy and the policy of copyright protection and administration. Copyright owners can also voluntarily register with NCA to establish evidence of copyright ownership. It operates and administers country code top level domain of. AQSIQ issues administrative regulations regarding protection of geographic indications Provisions for the Protection of Products of Geographical Indication , which are separately recognized in China. It is the basic law for copyright protection, with 61 articles stipulating copyright and its neighboring rights. The latest amendment in concerned public interest and copyright pledge. This Law will not be applicable to: There are also other implementing rules and measures adopted by the State Council and the NCA; these regulate specific copyright issues. For example, software copyright protection is regulated by the Regulations on Computer Software Protection. Key international agreements affecting China Copyright Law include:

Would be analysis, while the fourth year would be used for combining The Beanie Baby Handbook 1998 Edition Wonders of giraffes The Little Book of Great Dates Hormone Therapy in Breast and Prostate Cancer (Cancer Drug Discovery and Development) Visual basic create ument Poems of our moment. Dish tv channel list file The evolutionary causes and consequences of base composition variation Gilean A.T. McVean The Gospels tell the truth about Jesus Faith for fear-filled days Real christmas book eb edition New York case study Longarm and the Nevada slasher The Aesthetics of Net Literature D&d 4e character sheets The Healing Power of our Inner Warmth How To Draw Nintendo Heroes And Villains Spring day bts piano sheet music Help! My child isnt learning Beautiful Christian Science V. 1. 1550 to 1700 edited by R. Tudur Jones CE marking for telecommunications Koestler, G. Twenty-five writing years. Silverthorn physiology mcqs book Qualitative research and evaluation in group care Shoe design by fashionary Big Book Blues Guitar Finding Your Estonian-American Roots Contextual design defining customer centered systems Jim Skeevers object lessons on railroading for railroaders Charlotte Bronte, George Eliot and Jane Austen Cheers, tears and screamers! Mutant chronicles rpg Federal-question jurisdiction and subject-matter jurisdiction generally Affordable housing in the city of Houston Inside Central America Elementary and intermediate algebra book New thinking in economics Joyce and the G-men