THE INTELLECTUAL PROPERTY PROTECTION AND ENFORCEMENT IN CHINA

ZHAO Meisheng
Deputy Director-General
Patent Affairs Administration Department,
SIPO, China

www.sipo.gov.cn
Outline

• Part I  Overview of IP Protection and Enforcement in China
• Part II  IP Enforcement and Relevant International Rules
• Part III  Major Measures of Judicial IP Protection
• Part IV  Major Measures of the Administrative Enforcement and Protection of IPRs
Part I Overview of IP Protection and Enforcement in China

• General Introduction
• The Judicial IP Protection
• The Administrative IP Protection
1.1 General Introduction

China has established an IP protection system that has particular characteristics and conforms to international rules. As the system provides for protection through both administrative and judicial ways, it has the advantages of both types of mechanisms while linking them in an organic way. In addition, the system is supplemented by approaches such as arbitration and mediation.
1.2 Judicial Protection

- The duties of all of China’s judicial authorities in the protection of IPRs are set out under the law. The Courts fully exercise their functions in civil and criminal trials to apply appropriate sanctions against IP infringement and counterfeiting.
1.2 Judicial Protection

- Thereby, they actively support the administrative departments in complying with their legally defined duties to safeguard the legitimate interests of IPR holders. Procuratorates, the prosecution and investigation entities in China, are actively involved in investigating IP crime. The public security organs implement strong measures to combat all kinds of criminal networks deriving profits from the unauthorized use of IPRs.
1.3 Administrative Protection

- Local IP Offices are administrative enforcement authorities, and responsible for handling and mediating patent infringement dispute, ordering the ceasing of infringement, and punishing act of passing off in the area of patents.

- If the parties and respondents are dissatisfied with the order of Local IP Offices, they may file a lawsuit with the court.

- SIPO guides the activities of local IP enforcement, makes policies for IP enforcement and protection, and organizes nationwide special campaigns.
1.3 Administrative Protection

- At all levels, China’s administration makes great efforts to fight IP infringement and counterfeiting to expedite the settlement of IP disputes, and to protect the legitimate interests of IPR holders and the general public.
- SIPO is also in charge of coordinating international affairs in IP protection.
1.3 Administrative Protection

- Over the years, SIPO and local IP Offices have vigorously promoted the institutional and systematic development of the administrative system of IP enforcement. This system has the advantage that it provides for simple procedures through which IP infringements can be investigated expeditiously.
China’s IP enforcement mechanisms comply with relevant international rules, such as TRIPs, which provides for a variety of remedies for IP infringements.
2.2 The Legal Obligation of Governments to Protect Intellectual Property Rights

- All national governments are required to protect intellectual property rights, including patent rights, in accordance with international rules. Governments need to effectively protect patent rights in exchange for the disclosure of patent information.

- The provision of effective mechanism to enforce patent rights, a responsibility that may be fulfilled in different ways, is therefore a question related to a government’s credibility and essential for the functioning of the patent system.
Part III Major Measures of Judicial IP Protection

– The establishment of specialized IP courts in Beijing, Shanghai and Guangzhou has improved the efficiency of IP trials.
– It has also facilitated “three-in-one” trials that address civil, administrative and criminal IP measures.
– The introduction of IP courts has increased judges’ ability to identify and address the need for technical expertise and has resulted in a diversification of dispute settlement mechanisms in IP matters.
Part III Major Measures of Judicial IP Protection

– Enhanced efforts are made to guide, manage and supervise trials with a view to regulating IP decisions and building a management model suited to the characteristics of IP trial work.

– The publication of IP decisions additionally improved justice through transparency and helps to maintain an environment in which IPRs are protected by the judiciary.
Part IV Major Activities of the IP Administrative Enforcement in China

- Rules and Regulations for Administrative IP Enforcement
- Various Types of Administrative IP Enforcement Mechanisms
- Strengthening Abilities in the Area of Administrative IP Enforcement
- Establishing A Social Credit Framework for the IP System
- A Network for Reporting IP Infringements and Filing Complain
4.1 Rules and Regulations for Administrative IP Enforcement

- Improvements have been made to the rules and regulations governing administrative IP enforcement. A revision of China’s Patent Law and its Implementing Regulations is also actively being pursued. Furthermore, modifications to the practical guidelines for administrative patent enforcement have been finalized and stricter policies and measures for IP protection have been put in place.
4.2 Various Types of Administrative IP Enforcement Mechanisms

- Administrative IP enforcement measures have been enhanced, and innovative mechanisms are being introduced to fully exploit the benefits of administrative IP enforcement.

- As such, an advisory mechanism for the determination of IPR infringement, an expedited mediation mechanism for IP disputes, and an IP enforcement and protection mechanism for e-commerce have been established, in addition to cross-regional enforcement coordination.
4.3 Strengthening Abilities in the Area of Administrative IP Enforcement

- The abilities for administrative IP enforcement has been enhanced through expanded and intensified training and discussions of relevant cases.
- Likewise, the abilities and competence of investigators has been strengthened. The use of information technology for enforcement and protection has contributed to building a specialized, professional, standardized and information-based IP enforcement team.
4.4 A Social Credit Framework Has Been Established for IP protection

- A social credit framework has been established for the IP system in an orderly manner to enable the prompt sharing of information across sectors.
- Case information is published to provide an effective deterrent to patent infringement and passing off.
4.5 Building an IP Enforcement Assistance System for the Complaints from Right Holders

- A nationwide “12330” hotline has been implemented and a website has been launched to receive complaints from the public through phone, Internet and in writing, so as to transfer case information to the relevant administrative IP enforcement department.

- A network has been established for the reporting of IP infringements and for filing related complaints. 76 IP Enforcement Assistance Centers have been set up to handle complaints and reports of IP infringements.
Conclusion

• SIPO has made vigorous efforts in recent years to promote the institutional development of IP enforcement mechanisms. Through such mechanisms, China has been able to achieve good results in IP enforcement and to counter IP infringements forcefully.
Conclusion

• In the future, SIPO will continue to strengthen the protection of IP by actively building a working pattern for a more integrated IP protection, drafting policies and measures for stringent IP protection, and focusing on solving problems of IP protection in key areas.

• Through a sound IP enforcement system, right holders’ confidence in the Government’s efforts to enforce IPRs will be enhanced, there will be greater awareness of IP protection among all sectors of society, the creation and utilization of IPRs will be safeguarded, and a fair market environment will be fostered.
Thank you!
• Mr. ZHAO Meisheng
• Deputy Director-General
• Patent Affair Administration Department, SIPO, China;
• Contact:
• Tel:+861062083631
• Fax:+861062083091
• E-mail:zhaomeisheng@sipo.gov.cn
THE ENFORCEMENT OF INTELLECTUAL PROPERTY POLICIES IN COLOMBIA

FIDEL PUENTES SILVA
Deputy Superintendent for Jurisdictional Issues
Superintendence of Industry and Commerce
Who administers justice in our country?

Art. 116 - Political Constitution of Colombia

- CONSTITUTIONAL COURT
- SUPREME COURT OF JUSTICE
- COUNCIL OF STATE
- SUPERIOR COUNCIL OF JUDICATURE
- ATTORNEY GENERAL'S OFFICE
- TRIBUNALS
- THE JUDGES
- MILITARY CRIMINAL JUSTICE SYSTEM
Who administers justice in our country?
Art. 116 - Political Constitution of Colombia

**SPECIAL CASES**

**THE CONGRESS**

**THE JURIES**
in criminal cases

**CONCILIATORS**

**ARBITRATORS** agreed upon by the parties to pronounce decisions in law or in equity
Who administers justice in our country?

Art. 116 - Political Constitution of Colombia

Administrative Authorities

Administrative Authorities with judicial powers.
# ARTICLE 24 - CODE OF GENERAL PROCEDURE

<table>
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<th>TOPIC</th>
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“Principle of efficient allocation of competences”
LEGAL ACTION AGAINST INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS

Decision 486 of 2000

Civil circuit judge

Industria y Comercio
SUPERINTENDENCIA
Law 23 of 1982. Copyright


Decree 460 of 1995 regulating the National Copyright Registry and Legal Deposit.

Decree 533 of 1994: It regulates the Common Regime of plant breeder’s rights.

ICA’s Resolution 1893 of 1995 establishing the National Registry of Protected Plant Varieties.
DO THE NATIONAL COPYRIGHT OFFICE AND THE ICA ACT AS SPECIALIZED JUDGES?

“Principle of efficient allocation of competences”
GENERAL FEATURES

IMPLEMENTATION OF ORALITY
 Oral system and hearings. Written application.

ACCES TO JUSTICE
 Reasonable Duration

STRENGTHENING
 Discretionary provisional measures

USE OF ICT

ORAL VERDICT as general rule
 Announcing the objective of the ruling as an exceptional rule
RELEVANT CASES
RELEVANT CASES
Case – Gabriel Calle Arango vs. Centro Comercial San Diego

COMPENSATION OF DAMAGES ARISING FROM THE INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS

General condition of extra contractual civil liability (Prove of losses and damages)

Article 243 of Decision 486 of 2000 contains criteria for the calculation of damages.

Preset Compensation for Trademark Cases (Decree 1074 of 2015, subject to the assessment of damages to be determined by the Judge from a fixed amount derived from the aforementioned regulation)
SIC DEVELOPMENTS IN THE COMPENSATION OF DAMAGES ARISING FROM THE INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS.

FIRST STAGE
(requirement to prove damages)

SECOND STAGE
(the damage that is the logical result of the infringement)

THIRD STAGE
(a step towards the regulatory damages)
“In this regard, if we analyze the aforementioned Article, we find that its header announces a list of criteria for the calculation of damages. These criteria are separated into three subparagraphs. The first of them relates to consequential damages and lost profits, which allows us to conclude that whenever the law uses the word ‘criteria’ it refers to typologies of damages and that in case of subparagraph a these are the traditional ones that already existed in the Civil Code.”
This being so, it is logical that the other ‘criteria’ contained in subparagraphs b and c also relate to typologies of damages, which, despite not being those traditionally known, the legislator wanted to establish. Therefore, the profits obtained by the infringer, as well as the value of a hypothetical license, are themselves compensable damages in matters of special relevance such as those related to the protection of industrial property because the legislator so desired it.

(...)

SIC’S INTERPRETATION OF ARTICLE 243 OF THE DECISION 486 OF 2000
It should be clarified that the criteria and damages of subparagraphs a, b and c must be demonstrated in any case as they cannot be presumed.”
YOUR VALUES ARE OUR VALUES
DIRECCIÓN GENERAL DE OBSERVANCIA

Héctor Balmaceda
Director General de Observancia
Dirección Nacional de Propiedad Intelectual (DINAPI)

Creada por la Ley N° 4798/12 y reglamentada por el Decreto N° 460/13, como persona jurídica de derecho público, con carácter autárquico y patrimonio propio, como órgano de ejecución de la Política Nacional de Propiedad Intelectual.
OBJETIVO INSTITUCIONAL

La protección de los Derechos de Propiedad Intelectual, de acuerdo con lo dispuesto en la Constitución Nacional, las leyes que rigen la materia y los tratados y convenios internacionales atinentes, suscriptos y ratificados por la República del Paraguay.
DIRECCIÓN GENERAL DE OBSERVANCIA (D.G.O.)

Creada por la Ley Nº 4798/12 y tiene a su cargo la promoción y la defensa de los Derechos de Propiedad Intelectual en todas sus formas. Además, deberá desarrollar una actividad preventiva e investigativa a los efectos de reprimir los delitos de piratería y falsificación.
DIRECCIÓN DE LUCHA CONTRA LA PIRATERÍA Y LA FALSIFICACIÓN

Es dependiente de la “Dirección General de Observancia” de la DINAPI y se encarga de coordinar y ejecutar los planes, delineamientos y resoluciones dictadas en favor de la legalidad y en contra de la piratería y la falsificación en el Paraguay.
La Dirección General de Observancia, en el marco de lo dispuesto en las normativas vigentes, ha desarrollado verificaciones de mercaderías en:

- Diferentes puertos del país.
- Aeropuertos.
- Allanamientos (Central – C.D.E.)

Además, ha realizado incautaciones en forma aleatoria en la vía pública de cualquier tipo de productos falsificados.
INTERVENCIONES REALIZADAS
Aduana Terport
Importadora Cordillera Trading S.A

Auriculares, baterías, Cargadores, Perfumes

Samsung, Sony, Apple, Versace, Dolce & Gabbana, Carolina Herrera

VALOR DE LOS PRODUCTOS INCAUTADOS: USD 25.000.000
LOCAL
Shopping Lai Lai
Ciudad del Este

MERCADERÍAS
Productos HP

MARCAS
Hewlett-Packard

VALOR DE LOS PRODUCTOS INCAUTADOS:
USD 1.550.374
Aeropuerto Silvio Pettirossi (trabajo con la CAIA) Vuelo Air Class

Celulares, tarjetas de memoria, relojes, lentes de sol

Apple, Samsung, Sony, Motorola, Chanel, Invicta, Armani, Diesel, Prada, Michael Kors

VALOR DE LOS PRODUCTOS INCAUTADOS: USD 15.000.000
VALOR TOTAL DE LAS MERCADERÍAS INCAUTADAS - 2015:

U$S 85.476.035
CANTIDAD DE PROCEDIMIENTOS REALIZADOS EN EL 2015: 330
ESTADISTICAS

CANTIDAD DE PROCEDIMIENTOS

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VALOR DE PRODUCTOS INCAUTADOS

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RESUMEN DE INTERVENCIONES D.G.O. (2015) POR PRODUCTOS

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<th>Productos Incautados</th>
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<td>Accesorios</td>
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<td>Juguetes</td>
<td>USD 1.600.000</td>
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<td>USD 561.000</td>
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<td>Perfumes/Lentes de sol</td>
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<td><strong>TOTAL</strong></td>
<td><strong>USD 85.476.035</strong></td>
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INCAUTACIONES POR PRODUCTOS

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<th>Perfumes / Lentes de sol</th>
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<td>12.258.800</td>
<td>32.462.860</td>
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CANTIDAD DE PROCEDIMIENTOS 2011 - 2015

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Cantidad de Procedimientos

VALOR DE LOS PRODUCTOS INCAUTADOS
(DÓLARES) 2011 - 2015

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Periodo 2016
Intervenciones realizadas por la D.G.O Ene-Ago.

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<th>Valor de lo incautado (dólares)</th>
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<td>Puertos y Aeropuertos:</td>
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<td>Total</td>
<td>265</td>
<td>23.801.842</td>
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Allanamientos
Paraguay, segundo país de Sudamérica en salir de lista de piratería

En su informe de gestión de dos años, la Dirección Nacional de Propiedad Intelectual (DINAPI) destacó la salida del Paraguay de la lista de observancia 301 respecto a la lucha contra la piratería.
GRACIAS POR SU ATENCIÓN
THE ENFORCEMENT FUNCTION OF THE INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES: BEST PRACTICES AND CHALLENGES

ALAN B. GEPTY
Deputy Director General
Intellectual Property Office of the Philippines
OUTLINE

I. Introduction

II. The Need for an Enforcement Function

III. Legal Basis

IV. Implementation Procedure

V. Cases and Observations

VI. Conclusion
I. INTRODUCTION

Challenges of IPR enforcement

- Nature of IPR as private rights
- Investigation and Prosecution
- Few cases are filed
- Globalization and changing business environment
- Need for legal and institutional reforms
II. THE NEED FOR AN ENFORCEMENT FUNCTION

General Rule: IPR enforcement has to be initiated by the right holder.

Exceptions: Regulated products

Challenges: Investigation and prosecution
Compromise agreements
Procedural issues
III. LEGAL BASIS

Republic Act No. 8293, as amended by Republic Act No. 10372.

SEC. 7. The Director General and Deputies Director General. - 7.1. Functions. - The Director General shall exercise the following powers and functions:

xxx  xxx  xxx

c) Undertake enforcement functions supported by concerned agencies such as the Philippine National Police, the National Bureau of Investigation, the Bureau of Customs, the Optical Media Board, and the local government units, among others;

d) Conduct visits during reasonable hours to establishments and businesses engaging in activities violating intellectual property rights and provisions of this Act based on report, information or complaint received by the office; and
CHALLENGES

- How to maintain neutrality?
- What will be the scope and limitations of the enforcement functions?
- What are the parameters to be observed in the implementation of a visitorial order?
IV. IMPLEMENTATION PROCEDURE

OFFICE ORDER NO. 13-170 series of 2013

RULES AND REGULATIONS IN THE EXERCISE OF ENFORCEMENT FUNCTIONS AND VISITORIAL POWER OF THE INTELLECTUAL PROPERTY OFFICE, AND CREATING THEREBY AN INTELLECTUAL PROPERTY RIGHTS (IPR) ENFORCEMENT OFFICE.

Effectivity Date: 15 October 2013

(RULE I) Section 2. Applicability. These Rules shall govern the procedure in the exercise of enforcement functions of the Intellectual Property Office of the Philippines (IPOPHL), and the exercise of visitorial power based on information, report, and complaint received by IPOPHL.
SCOPE AND LIMITATIONS

- Supported by law enforcement agencies;
- Enforcement actions must be based on report, information or complaint;
- **Covered Acts**: manufacturing, production, importation, exportation, distribution, trading, and offering for sale, including other preparatory steps necessary to carry out the sale of **counterfeit** and **pirated goods** provided that there is no pending case before any office, tribunal, quasi judicial body, or court involving the same issue/s or subject matter. *(Rule III, Section 3, Office Order 13-270)*
Counterfeit Goods shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation [TRIPs Agreement]

Colorable Imitation. This term has been defined as "such a close or ingenious imitation as to be calculated to deceive ordinary purchasers, or such resemblance of the infringing mark to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, and to cause him to purchase the one supposing it to be the other." [Emerald v. CA, G.R. No. 100098. December 29, 1995]
Complaint vs. Report

RULE I. Section 4.

(b) Complaint – is a verified written document signed by a right holder or authorized representative setting forth the nature of the violation of intellectual property rights and the enforcement action requested as defined under these Rules.

(i) Report – is any information, written or verbal, received by IPOPHL pertaining to a violation of IPR.
ENFORCEMENT ACTION BASED ON A VERIFIED COMPLAINT

1. Receiving and Docketing of the Verified Complaint

2. Case Assignment to IPR Enforcement Officer For Evaluation

3. DDG for Enforcement to Act on the Recommendation/s

4. Enforcement Action:
   a. Monitor Compliance
   b. Conduct visit/s (upon issuance of Visitorial Order)
   c. Referral to law enforcement agencies for case build up and/or application of search warrant

5. Preparation of Enforcement Action Report

6. Administrative Action:
   File Administrative Case with DTI, LGU and/or other Gov’t Agencies
ENFORCEMENT ACTION BASED ON REPORTS

1. Receiving and Docketing of the Report

2. Referral of the Report to Enforcement Officer for Validation

3A. If Report is FALSE

   Dismissal of the Report and Notification of the Informant (if known)

3B. If Report is validated to be TRUE

   4. Notification of the Right Holder for Filing of Appropriate Verified Complaint

   Same Procedure with the Enforcement based on Complaint
ENFORCEMENT ACTIONS

a. Issuance of notice/warning to the respondent/s to observe compliance with the provisions of the IP Code, as amended;
b. Issuance of visitorial order on the subject premises;
c. Issuance of compliance order against the respondent/s;
d. Immediate filing of administrative complaint before the local government unit concerned, and/or other government agencies or tribunals;
e. Referral of the case to a law enforcement agency for case build-up;
f. Recommendation of application for search warrant;
g. Dismissal of the complaint;
h. Referral of the case to other government agencies for filing of charges for violation of other laws, rules or regulations; or
i. Such other actions necessary to ensure compliance with the provisions of the IP Code, as amended.

Rule III, Section 4.Office Order No. 13-170, Series of 2013
RULE I. Section 4.

(a) Administrative Action - is an official action taken by the Deputy Director General or an officer-in-charge for IPR Enforcement after the implementation of the visitorial order which may include, but not limited to, the issuance of compliance orders and/or filing of appropriate charges before the local government units concerned, or other government agencies or tribunals.

(d) Enforcement Action – is any action taken by the IEO relative to the complaint or report with the end view of ensuring compliance of the provisions of the Intellectual Property Code, as amended by Republic Act No. 10372.
V. CASES AND OBSERVATIONS

**Case 1:** Sale of pirated books *via* Instagram
Payment through E-payment provided by a Telco Company

**Action:** Notice/Warning to the Telco Company
Merchant agreement was terminated

**Case 2:** Sale of counterfeit goods *via* an online market

**Action:** Notice to the administrator of online market
Account of seller was cancelled

**Case 3:** Assistance in case build up and investigation of cases

**Case 4:** Conduct of visits and information campaign in malls
OBSERVATIONS

- For entities with genuine business considerations, there is a very high degree of compliance whenever an enforcement action is undertaken.
- Enforcement action is also effective in curbing online infringement (N.B. compliance is bolstered by the secondary liability provision for copyright infringement).
- Exercise of enforcement functions helps deter IP violations.
- Cost effective remedy to discourage trade of counterfeit and pirated products, and help promote use of genuine products.
VI. CONCLUSION

With the increasing volume of international trade and the challenges of IPR enforcement in a borderless and complex market, it is believed that IP Offices may have to take a pro-active role in ensuring the enforcement of IPRs. While IP awareness and education should be a continuing program, the economic environment dictates a system where the enforcement of IPRs should not be entirely dependent on the right holders.

IP is a tool to generate trade and competitiveness in a free and fair market. However, businesses and companies in every country consist of at least 90 per cent of small and medium-sized enterprises (SMEs). They are unlikely to pursue aggressive IP enforcement as they may have financial constraints or be more focused on expanding their respective businesses. In order for SMEs to realize the benefits of IP, it is therefore necessary that IP Offices take a pro-active approach towards IPR enforcement.
Thank you.