Shifting the Intellectual Property Paradigm?  
Weaker in the United States and Stronger in China

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Abstract: The quantitative studies of Chinese patent, copyright and trademark infringements cases filed annually from 2003 through 2007 reveal that China has become a litigious society and that there are more intellectual property litigation cases in China than in the United States. The qualitative studies of translations of written decisions opined by Chinese courts show that the Chinese intellectual property owners are no different than the U.S. owners in valuing their intellectual property rights as assets, asserting their rights against others and utilizing the judicial system to enforce their rights and solve disputes. This Article asserts that China and the United States are at a divergent crossroad with respect to intellectual property that based on the quantitative and qualitative studies of China intellectual property cases, the New China is fast moving in its embrace of a strong intellectual property rights system while the United States is slowly moving for a weaker intellectual property rights regime.

I. INTRODUCTION

Whenever the words “China” and “intellectual property” appear in the same sentence, spoken or written, images of rampant piracy immediately dominate normative thinking, media headlines, trade negotiations, and policy statements. As the normative view on China solidifies over the years, private property and intellectual property concepts are too foreign and abstract for China and its political and judicial systems to understand. Concerns about China’s inability to curb

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2 See generally, Goodman, supra note 1 (explaining that in communist China with 1.3 billion people “the concept of private property is neither fully understood nor valued, let alone the abstract notion of intellectual property.”); Barden N. Gale, The Concept of Intellectual Property in the People's Republic of China: Inventors and
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piracy of intellectual property owned by U.S. companies continue to be of national interest to the U.S. government.\(^3\)

Recent empirical data and translations of Chinese court decisions on Chinese intellectual property offer a startling new picture of China that directly contradicts the long held view on China with respect to intellectual property from the United States and the West.\(^4\) The new data reveals that China has accelerated its embrace of intellectual property as an important asset at an astonishing speed.\(^5\) The Chinese society has become very litigious in enforcing intellectual property rights and assets, as seen through tens of thousands of cases filed and disposed of annually in recent years that were brought by Chinese individuals and corporations against other Chinese infringers.\(^6\) The Chinese intellectual property owners are not hesitant to assert and enforce their rights by utilizing administrative and judicial means available in China.\(^7\) Interestingly, the new insights on China and intellectual property rights have not been identified, analyzed or discussed in neither academic literature nor in the popular press.\(^8\) No scholar in the legal community or elsewhere has written on the New China and its astonishing speed of embracing


\(^4\) See Section IV, *infra* p. 19.

\(^5\) The high volume of intellectual property litigation cases filed by Chinese against Chinese is even more remarkable given that in China the concept of intellectual property is relatively new. Cf. Goodman, *supra* note 1 (commenting that intellectual property concepts are abstract and too new in China); Intellectual Piracy in China, PBS News Hour Report, October 13, 2005 [http://www.pbs.org/newshour/bb/asia/july-dec05/china_10-13.html](http://www.pbs.org/newshour/bb/asia/july-dec05/china_10-13.html) (reporting private property was banned in China for several decades and explaining how China does not “fully buy the concept of intellectual property”).

\(^6\) See Section IV, *infra* p. 19.

\(^7\) See Section IV, *infra* p. 19.

The new revelation on China with respect to intellectual property cases is even more striking when the data is compared to those of the United States, a nation generally known for its litigious approach and strong intellectual property protection. In 2005, there were 12,159 intellectual property cases filed in the United States, compared to 13,424 cases in China.\(^9\) In 2006, the United States saw 11,486 cases, while China witnessed 14,219 intellectual property cases.\(^10\) The trend continues, as demonstrated by the fact that the number of intellectual property litigation cases filed in 2007 for the United States was 9,783 cases\(^11\) and China was 17,877.\(^12\)

What does the quantitative data inform us, beyond the obvious that there are more intellectual property litigation cases in China than in the United States? This article goes beyond the quantitative data; it examines the translations of written opinions rendered by courts across China on intellectual property rights. This article asserts that China and the United States are at a divergent crossroad with respect to intellectual property rights.\(^13\) Using the quantitative data, data comparison, and the Chinese courts’ written opinions, this article demonstrates that China’s embrace of intellectual property rights challenges the normative assumption about China as the land of piracy. Most importantly, the article contends that while China is embracing a stronger intellectual property right regime, the United States is seeking a weaker system.\(^14\)

Section II focuses on the shift towards weaker intellectual property rights unfolding in the United States. The United States is often viewed by the people inside and outside the United States as a litigious society;\(^15\)

\(^9\) See Sections II and IV, infra pp. 15, 19.

\(^10\) See Sections II and IV, infra pp. 5, 19.


\(^12\) See Section IV, infra p. 19.

\(^13\) See Sections II and IV, infra pp. 5, 19.

\(^14\) See Sections II and IV, infra pp. 5, 19.

\(^15\) Philip G. Peters, Jr., What We Know About Malpractice Settlements, 92 IOWA L. REV. 1783, 1825-26 (2007) (stating that the majority of Americans believe that “[p]eople are too quick to sue” in the United States); David G. Savage, A Trial Lawyer
perhaps soon this view will no longer hold true compared to intellectual property enforcement in the emerging New China.\textsuperscript{16} Phrases like “too many frivolous lawsuits” and “too costly” to do business became familiar in shaping torts litigation reform in the United States.\textsuperscript{17} Successful torts law reform has drastically curbed litigation.\textsuperscript{18} In recent years, there has been a new effort to reform the new torts—intellectual property litigation—in the litigious United States society.\textsuperscript{19} Indeed, concerted lobbying activities from various sectors of the United States economy struck a similar chorus for intellectual property litigation reform.\textsuperscript{20}

Proponents for intellectual property litigation reform cite as a reason how the strong property regime has stifled competition\textsuperscript{21} and

\textit{on Ticket Has Corporate U.S. Seeing Red}, L.A. TIMES, Sept. 13, 2004, at A1, A12 (reporting on a poll finding that 80 percent of Americans believe that the nation is too litigious with too many lawsuits).

\textsuperscript{16} See Sections II and IV, infra pp. 5,19.

\textsuperscript{17} See Jeffrey Abramson, \textit{The Jury and Popular Culture}, 50 DEPAUL L. REV. 497, 515 (2000) (analyzing a 1996 report finding that more than 80 percent of jurors “believed that there were too many frivolous lawsuits”); Stephen Daniels & Joanne Martin, “The Impact that It Has Had is Between People’s Ears:” Tort Reform, Mass Culture, and Plaintiffs’ Lawyers, 50 DEPAUL L. REV. 453, 463 (2000) (discussing poll results and the decades of tort war in the United States). \textit{See also} Remarks in a panel discussion on the high cost of lawsuit abuse at the White House conference on the economy, Dec. 15, 2004 http://findarticles.com/p/articles/mi_m2889/is_/ai_n9485464 (compiling President Bush’s remarks on litigation cost on businesses).


\textsuperscript{19} See generally Xuan-Thao Nguyen, Justice Scalia’s Renegade Jurisdiction: Lessons for Patent Reform, 83 TULANE L. R. 111 (2008).

\textsuperscript{20} See generally Nguyen, supra note 19, at 119 (discussing the various reform efforts to curb patent litigation costs); Editorial, \textit{Stop the attempt to weaken patent system}, CONCORD MONITOR, June 25, 2007, http://www.cmonitor.com/apps/pbcs.dll/article?AID=/20070625/REPOSITORY/706250310 (identifying efforts to weaken the patent system under the reform banner and opposing the efforts in the editorial).

\textsuperscript{21} \textit{See} FRED WARSHOFSKY, THE PATENT WARS: THE BATTLE TO OWN THE WORLD’S TECHNOLOGY (1994) (explaining how American and Japanese companies have been using patent litigation to prohibit competition). \textit{See also} Michael
caused high litigation costs in the United States. Some critics complain that intellectual property owners, particularly patent holders, abuse their patent rights by filing too many patent litigation cases across the United States. The criticism of patent litigation, though lacking support by the data which indicates that patent case filing has been relatively flat with the annual number of about 2,820 patent cases filed in the United States in the last five years, has generated much attention in Congress. While the number of patent litigation cases in the United States remains constant, the pendulum swings in the opposite direction for China. In 2006, there were 3,196 patent litigation cases, and in 2007 the number increased to 4,028 cases in China. Nevertheless, many corporate officers, lawmakers, lobbyists, and commentators express their views and demand that the U.S. Congress revamp and change the current system into a weaker intellectual property law regime, particularly regarding patent protection and enforcement in the United States.

Section III explains the entrenched view that China equals the


24 See Section II, infra p. 5.

25 See Nguyen, supra note 19 at 143 (reviewing various bills introduced in Congress on patent litigation reform in the last couple sessions).

26 See Section IV, infra p. 19.

27 See Section IV, infra p. 19.

28 See Section II, infra p. 19.
piracy of intellectual property. U.S. government officials, policy makers, industry experts all criticize China for national and global problems relating to intellectual property piracy. None recognizes the drastic transformation in China with respect to intellectual property.

Section IV quantitatively demonstrates through case databases that China has embraced intellectual property rights on a massive scale. This section examines the numbers of cases filed each year involving trademark, copyright and patent infringements. The litigation and enforcement trend shows the high volume of cases filed in the last five years at both lower courts and appellate courts in China. The upward trajectory demonstrates how China has come in full circle in recognizing and enforcing their intellectual property rights. Section V affirms the quantitative study of Chinese intellectual property litigation cases by examining the translations of written decisions opined by Chinese courts in intellectual property infringement cases. The decisions reveal that Chinese owners of intellectual property rights are relying on the judicial system to adjudicate their rights. The decisions also show that the Chinese intellectual property owners are similar to the U.S. counterparts: they assert their rights in typical intellectual property infringement and breach of contract cases involving patents, copyrights, and trademarks.

Section VI notes a puzzle among the quantitative and qualitative studies on Chinese intellectual property: there is conspicuous absence of foreign intellectual property owners as litigants. Indeed, it is puzzling to discover that there is a very small number of intellectual property litigation and enforcements brought by foreign intellectual property owners against the Chinese, although foreign intellectual property owners have persistently criticized China on violation of intellectual property rights. The absence of foreign intellectual property is perhaps a result of how the long-held assumption about China’s intellectual property piracy prevents U.S. from recognizing and acknowledging the recent drastic change in China with respect to intellectual property enforcements. The article concludes that is time for a more accurate picture about China’s intellectual property enforcements that would assist policy makers and legal scholars in their policies and approaches to the New China.