Internationalization, Modernization, and Codification: the Way of China Intellectual Property Development

Wu Handong*

The new millennium and the new century witnesses amazing advances and innovations in science and technology and as a result, the lifestyle of human beings is undergoing dramatic changes. In legal system, the intellectual property is the most vulnerable one exposed to the impact, which obliges all nations to change their policy and revise their laws of intellectual property to respond to the 'knowledge revolution'. With the extensive international exchanges and cooperation in the commerce, science and technology and culture as well, protection of IP is attracting increasing attention. New international trade system demands that the IP law can balance the interests of each party. In the new tide of codification of civil law, legislators attach importance to the IP law that is apparently a new issue, new civil relationship and a new system to be worked out. Lawmakers try to incorporate the IP into civil code, or try to codify special intellectual property code, which has great influence on the development of Chinese IP system.

* Professor of Law in College of Law, Doctor of Law, specializes in civil law and intellectual property, President of Zhongnan University of Economics and Law, Doctoral student supervisor, Director of Intellectual Property Research Center, vice-director of Chinese University Intellectual Property Association, consultation expert of the Supreme People's Court, Arbitrator of CCPIT. Having published 8 books, including: *Study on Fair Use of Copyright, Copyright Laws of Western Countries, Study on Incorporeal Property*, etc; more than 70 articles in Chinese Social Science, Law Study, and Chinese Law Review. Having won more than 10 awards, such as: Chinese excellence doctoral dissertation, first prize of Justice Ministry.

I. New International Trade System and Internationalization of IP Protection System.

Economic globalization prevailed in late 20th century and a new international trade gradually took shape, which greatly influenced the framework of 21st century. [1]

Economic globalization is a post-world-war economic phenomenon in which the economy of individual nations grows increasingly dependent on each other, interacting with each other and interwoven with each other. It requires that individual nations eliminate trade barriers or non-trade barriers and standardize the international trade rules in order to promote free international trade.

GATT and its successor- WTO play a very important role in boosting economic globalization. GATT pursues trade liberalization through guaranteeing most-favored-nation treatment among all members, granting tariff reduction and even taking measures to abolish tariff and eliminate non-tariff barriers with an overall goal of facilitating the international trade by making the best use of international trade resources and expanding the production and exchange of the goods. Different from other international conventions and international organizations, GATT integrates the protection of IP into international trade system. According to a document for the negotiation of Uruguay Round among U.S., Japan, and EEC, IP protection in GATT framework does not aim at coordinating of the IP laws of its member countries, but aim at putting right the trade disorders resulted from the inadequate protection of IP according to international standard.[2] It should be recognized that the benefits gained from IP protection by developed and developing countries are unbalanced, so their positions and anticipated aims in international negotiations and dialogues are very different. In addition to WIPO, WTO also becomes an important forum for the protection of IP where the eastern and western debate and compromise about IP issues, which directly conditions and shapes the development of IP system.

In the framework of GATT, after 7 years of negotiation, the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights*

[1] Xu Ming: 27 conundrum for present China, China Today Press, 1997, p11

[2] Li Xiaowei: *Change of International Protection of IP and its Influence*, Finance [J] , V ol.3, 1996, Hongkong.

(Trips) was signed, and annexed to *Final Act Embodying the Results of The Uruguay Round of Multilateral Trade Negotiation Done at Marrakech*. The enforcement of Trips drives the IP from intellectual creation field into international trade; and it is for the first time that the IP Law is connected with international trade development. It is a milestone signaling a new stage of the protection of IP that ensures adequate standards of intellectual property protection, which plays an important role in coordinating IP legislation and judicial activities of its member countries. Compared with previous international treaties on IP, Trips has following features: 1. Trips, GATT, and GATS are three main legal systems within WTO framework. 2. Most of the clauses of Trips are substantive obligation provisions that do not permit the reservation of members. 3. Trips establishes an effective multilateral dispute settlement mechanism, which is 'highly uniformed' and 'strongly compulsory.'[3] In international protection of IP, developing countries are worried about finance and administrative burden arising from high standard protection of IP, but they have to face up to the pressure brought about by the new international trade system. The reason for the developing countries applying for entry into WTO and accepting the new international trade rules including WTO is for the sake of their own interests: 1. Uruguay Round represented some interest claims; in other words, the developing countries adopt the Trips is not a mere concession, but paid one in exchange their own interests. 2. It is necessary for the development of economy and culture of developing countries, especially for those rising industrial countries because Protection of IP relates to policy-making concerning sciences, culture and economy and can promote all-round society progress in the long run. It is in this background that China adopted Trips and joined in WTO.

As to China, Chinese IP system dates back to Qin dynasty as an imported institution. Qin government implemented so-called 'New Policy', learning from the western countries. With help of foreign legal experts, Qin government promulgated a series of acts such as *'Regulation of Encouragement of Rejuvenating Industry by Awarding Premium'*, *'Interim Regulation of Trademark Registration'*, and *'Copyright Law of Qin Empire'*. Later Bei Yan government and Kouming government also enacted their IP laws but both failed to implement these laws owing to political turbulences resulted in terrible social chaos and hard livelihood for their people. Since the People's Republic of China was founded, Chinese

[3] Zeng Linliang: *WTO Legal System*, Wuhan University Press, 1996, p166.

government have once promulgated some administrative regulations to protect IP, but there were no legal norms in a strict sense for a long period of time. Since it adopted opening-up policy in the 1980s, China has been strengthening its legislation on IP and has established its IP legal system soon. In recent 20 years, China has made a series of IP laws and regulations. The major laws include: *Trademark Law (1982)*, *Patent Law (1984)*, *Copyright Law (1990)*, *Law Against Unfair Competition(1993)*. At the same time, China actively takes part in international IP protection systems. The main international treaties that China has joined and ratified includes: Convention for Establishing the World Intellectual Property Organization (1980), Paris Convention for the Protection of Industrial Property (1985), Madrid Agreement Concerning the International Registration of Marks (1989), Berne Convention for the Protection of Literary and Artistic Works (1992), Universal Copyright Convention (1992), Convention for the Protection of Producers of Phonograms Against Unauthorized Publication of Their Phonograms (1993), Patent Cooperation Treaty (1994), etc. China accessed to the WTO in 2001, and became a contract party of the Trips.

Before its accession to the WTO, China revised *Copyright Law (2001)*, *Patent Law (1992, 2000)*, *Trademark Law (2001)*, promulgated *Regulations on the Protection of New Varieties of Plants (1997)*, and *Regulations on the Protection of Layout-Design of Integrated Circuits (2001)*. In conclusion, it only took 20 years from the 1980s of 20th century to the beginning of 21st century for Chinese IP legal system to develop from lower level to higher-level protection and to finish the transition from practice with Chinese characteristics to internationalization. Chinese accomplishment attracts worldwide attention.[4]

It is no double that Chinese IP legislation should conform to the trend of internationalization, undertaking the obligations stipulated by the international conventions. The author of this paper believes that the internationalization of IP system requires that the fundamental principle and basic provisions of international IP system are legally binding universally, and that means that the international law is prior to the domestic law and the domestic law should defer to the international law. But internationalization of IP system does not require the unification of IP Law of individual countries on subject matter of protection, standard of protection, and protection

[4] Comments of Dr. Arpad Bogsch, former director-general of WIPO

procedures. According to principle of 'minimum standard', the protection level of individual countries shouldn't be lower than convention's standard, which is a general requirement of internationalization of IP system. As China is a developing country, its protection standard should be based upon its economical development and the development of science and technology, and culture; it is enough for China to meet the requirement of minimum standard stipulated by international convention. Chinese legislation should make efforts to find a balance point between the Chinese legal characteristics and internationalization.

In the years before China's accession to WTO, there was a ridiculous phenomenon in IPR protection in China that was 'super-national treatment and super international standard' where the copyright protection of foreigners exceeded that of Chinese. For example, the protection term of software was 25 years for Chinese, while it was 50 years for foreigners; China copyright law did provide protection for foreigner's applied art but refused to provide protection for Chinese applied art, which resulted in the situation of the so-called 'discrimination against the native Chinese'. The reason why Chinese were discriminated while foreigners were favorably in respect to IP protection then is that China joined "Provision on the Implementation for International Copyright Treaties" in the 1990s but did not revise its Copyright Law in time; while international treaties forced China to protect foreigner's works more favorably. *The Amended Copyright Law of China (2001)* put right the situation, granting the foreigner equal treatment with Chinese and enhancing Chinese works protection standard at the same time, properly coordinating and balancing the IP protection for foreigners and Chinese. What is called 'super international standard' is that the protection of IP exceeds the obligations of convention. For example, the application subject of Regulations of the People's Republic of China on the Customs Protection of Intellectual Property Rights includes all infringing goods, while the Trips only requires that customs authorities take measures to suspense the release of the suspected importation of counterfeit trademark or pirated copyright goods. Apparently, the protection scope of Chinese customs authorities exceeds the scope required by The Trips. Another example is about software protection. According to *Notification on Banning the Use of Software of Illegal Reproduction* promulgated by State Copyright Bureau, anyone hold the unauthorized software constitute infringement; Japan Copyright Law stipulates that, intentional reproduction and using the unauthorized software for business constitute infringement. Furthermost,

In Chinese academia, some scholars propose that the requisites of infringement of IPR should adopt the non-negligent liability (or strict liability), and adopt punitive compensation for losses learning from American law. The author thinks, paragraph 2 of Article 45 of the Trips does not require Members to adopt strict liability to constitute infringement of IPR. So these proposes need further investigation and studies. In conclusion, in the process of IP internationalization, we should formulate a feasible IPR protection strategy for different development phases. The strategy should be based upon the long-term interests with vision for the future without doing harm to the current interests; China should abide by the international conventions to protect the foreign high technology, while pursuing international cooperation to protect traditional knowledge, heritage resources, and folk literary and art which China holds a special advantage.

II. Technological Revolution and Internationalization of IPR System.

Since the late half of 20th century, high technology revolution represented by micro-electronics technology, bioengineering technology and new material technology has greatly promoted the development of the society. To encourage the innovations of high technology, many countries, one after the other, made development strategies or plan, such as: 'Strategic Defense Initiative' (Star Wars) of America, 'Fundamental Policy of Science and Technology Rejuvenation' of Japan, 'Eureka Plan' of EC, and 'High technology Innovation Strategies' of China. These Plans all give great impetus to the high-tech innovations and lots of high-tech products are developed as a result, most of which are information products. The revolution naturally brings about new problems in the domain of IP protection, which forces legislators of all countries to look for a new way to protect high technology. They work out three ways: 1. 'cross-link protection', that is, borrowing provisions of industrial copyright and copyright to make a new law to protect the high technology; 2. 'Sui generi' protection, that is, for example, creating 'information property' for information products, which grant the quasi-patent or other similar protection; 3 'traditional protection', this is, sticking to traditional IP system, granting copyright or patent, but encouraging modification and innovation on rights conferred.

'Knowledge revolution' typified by network technology and genetic

technology started in 1980s in the wake of high technology revolution.[5] The Internet, a product of information technological revolution, a non-center global information medium, which constitutes a cyberspace, not only changes the lifestyle of human beings, but also poses as a challenge to the current legal system. As for IP system, Internet brings about the following problems: 1. Internet copyright problem, that is, how to extend the exclusive rights to cover the network transmission of works, which boils down to three concrete issues, namely: protection of digital works, legal protection of encryption technology, and protection of database should be worked out.[6] 2. Network marker problem. Business trademark and logos are digitalized online. The transformation induces two innovations: first is the innovation of traditional trademark system; second is the innovation of protection in domain name. For first innovation, we should take into account some problems: the conflict between trademark protection limited within the territorial scope and internationalization of the network, and the conflict between the classification protection of trademark and the exclusive virtue of network trademark, and changed modes of infringement and requisites to constitute infringement in network. For the second innovation, we should consider the following problems: how to register and examine the domain name; what's the nature and content of rights in the domain name, how to coordinate the conflict between the domain name and prior rights acquired by another person, how to protect the domain name and settle disputes concerning domain name. 3. Unfair competition in network. The present competition law confronts the problems resulting from network transmission and electronic commerce, such as imitated commercial packing of screen view and web site interface, the encryption measures for business secrets online, false advertising in network, etc.[7]

As the only match of network technology, genetic technology is regarded as one of greatest technologies in 21st century, and it be possibly human being is on the threshold that genes deciphers and decides everything. Genetic foods, genetic therapy, exploitation genes of plants and animals and even of human genes, will result in a series change of human beings and the environment. Although genetic technology is very con-

[5] Duan Ruichun: *Some Thoughts on Intellectual Property*, Pursue Truism, Vol.4, 1993, p25.
[6] Xu Hong: *Intellectual Property Law in Network Time*, Law Press, 2000, p8.
[7] Zhang Pin: *IPR Protection in Network and Legal Analyzing*, Guanzhou Press, 2000, p112.

troversial in protection traditional heritage, customs and religions, some countries are inclined to grant patent protection or other IP protection to this new technology. Genetic patent relates to two problems: 1. How to define the scope of genetic patent, including how to define genetic methods, genetic products, genetic-modified plants and animals, genetic-modified micro-organism, and genes gained without human bodies or by technological measures. 2. How to define the scope excluded in genetic patent protection, including methods for human being cloning, commercial use of the embryo, and simple discovery of gene order.

Chinese IP lawmaking commenced in the 1980s, consummated in the 19 90s, and takes the turn of innovation at beginning of the new century. After several revisions, China has realized modernization of system innovation and has accomplished the following achievements.

1. Revision of Copyright Law in 2001.

The revised Copyright Law extends the scope of the law to involve more subjects, including applied arts, acrobatic performances, architectural designs, literary and artistic works published via the Internet; computer software shall be deemed as written works and shall be protected by prolonging its term of protection to 50 years and abolishing software registry as the prerequisite for copyright protection; 'cinematographic, television and videographic works' are revised as 'cinematographic works and works created by virtue of an analogous method of film production'; database with originality shall be deemed as creative works and shall be protected. The revised Copyright Law extends the rights the copyright holder enjoys, add the right of rental that is, the right to authorize, with payment, others to temporarily use cinematographic works, works created by virtue of an analogous method of film production, and computer software, except any computer software that is not the main subject matter of rental; the Law broadens the extension of the right of performance, which shall be interpreted as the right to publicly perform works and publicly broadcast the performance of works by various means; the right of communication of information on networks is added, which is the right to communicate to the public works, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them. In exploitation of rights, besides consummating the licensing contract, Assignment Contracts shall be permitted. To facilitate the use of rights, collective administration of copyrights is prescribed. In limitations to rights, to

coordinate the relationship among copyright holders, users and the public, the fair use of works, including private reproduction, performance, broadcasting, use by state organs for the purpose of fulfilling official duties, translation, are allowed on stricter condition; In order to implement the strategy of national rejuvenation through science and education, compiling and publishing textbooks for implementing the nine-year compulsory education and the national educational program is listed as one of statute license[8], learning from the achievements and practice of other counties. In remedy of rights, the amended Copyright Law provides the protection of the electronic right management information of works and prevent intentionally circumventing or destroying the technological measures taken by a right holder for protecting the copyright or copyright-related rights of his works.[9] The revised Copyright laws prescribe tougher penalties for copyright infringement, providing a statute damage that does not exceed RMB 500,00 (about US$6,485) when damages cannot be calculated.[10] Copyright holders or other right holders concerned also may apply to a people's court to order injunction or evidence preservation even before initiating legal proceedings. In the principle of constituting an infringement, defendant should have faults or he should prove that he has no faults; otherwise, he would be an infringer.

2. Revision of Patent Law on 1992 and 2000 respectively.

Each revision of Patent is comprehensive and the improvement is remarkable. In patentable subject matter, the scope extends to food, drink, condiment, medicine; and substances obtained by means of chemistry. In patentable process, the scope extends from processes used in producing products only to processes and products themselves. The duration of patent right is prolonged to 20 years for inventions and 10 years for utility models and designs, counting from the date of filing. In patentee rights, import and franchise is added. In limitation of rights, Compulsory License for Exploitation of Patent provides more strict conditions. In the examination and approval procedure, the revoking procedure is deleted to facilitate the examination and approval. To keep in further conformity with the Trips, the revised Patent law grants judicial review by abolishing the provision that reexamination by Reexamination Board concerning the

[8] Article 23 of Copyright Law of the People's Republic of China (2001)
[9] Article 47 of Copyright Law of the People's Republic of China (2001)
[10] Article 48 of Copyright Law of the People's Republic of China (2001)

revocation and invalidation a utility model or design shall be final. To intensify effectiveness of patent protection of right holders' legitimate rights, the revised Law circumscribes the 'good faith' sale, use of patented products without authorization of the right holder; adds provisional measures such as injunction and evidence preservation before initiating legal proceedings; adds statute remedy when the damage is hard to be calculated.

3. Revision of Trademark Law in 1993 and 2001 respectively.

In trademark subject matter, the trademark protection extends to service marks; names of the places where the Central and State organs are located and names of foreign places known to the public shall not be used as trademarks; the component of trademark broadens to any visual signs capable of distinguishing the goods or service, including any words, designs, letters, figures, three-dimensional symbols, combinations of colors and their combination. As to right subject, the trademark right holder extends to any natural persons, legal entities or other organizations. For trademark protection, the Law provides modification procedure in trademark examination, priority right in application, and that 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.[11] In civil procedure, the revised law abolishes final-decision power of the Trademark Reexamination Board, while provides trademark holder an opportunity of judicial review. For enforcement of trademark, the revised Law provides provisional measures to strengthen the enforcement, and statute damages. For protection of well-known trademark, according to Paris Treaty and Trips, the Law enumerates the factors in establishment of a well-known mark and particularizes the measures of its protection.

4. Enaction of Regulations on the Protection of Layout-Design of Integrated Circuits in 2001.

The Regulations specify the subject matter of protection, subject of right, rights conferred, term of protection, enforcement of rights of layout-design of integrated circuits, according to the Trips.

[11] Article 48 of Copyright Law of the People's Republic of China (2001)

5. Enaction of Regulations on the Protection of New Varieties of Plants in 1997.

The Regulations specify the subject matter, subject of rights, rights conferred, limitation of rights, term of protection of new varieties of plants.

In lawmaking of IP, China pays attention to the development of modern science and technology all the time, to speed up the process of modernization of IP system. The author holds that modernization of IP system manifests its feature of keeping the pace with the time. From its origin to now, IP system has a history of 300-400 years and those years have witnessed important history events from industrial revolution to information revolution. IP's history shows that it was born with technological revolution and it evolves with technological revolution, and IP system itself is an interactive process between legal institution innovation and technological innovation. Looking back the world technology development and economic development, it is not hard to find the fact that: the country with developed science and technology and prosperous economy surely has a perfect IP system; the quality and quantity of independent intellectual property rights of those developed countries take a leading place around the world just like the development of their science and technology and economy. Taking America as an example, as a super power in science and technology and economy, it is also a super patent country. Its patent application takes up one fifth of that in the world every year. It is also a super trademark nation, 9 of top-ten well-known brands belonging to it.

As a developing country, China is gearing to market economy and does not have a perfect science and technology system. So in legal protection of IP, China faces some problems. For example, there are many research achievements that are not translated into IP; there are some IP in some fields, but in key technological areas there are not much independent intellectual property rights; there are some domestic IP, but most of them do not enjoy the international protection. To some degree, IP protection level reflects objectively the development of science and technology, economy. Nowadays, the differences in protection of IP reflect the essential differences of development of science and technology, and economy. Today, economic development depends on knowledge with science and technology as its main content, this is to say, knowledge has

become the impetus for productive force and economic increase. The new century is the time of knowledge economy, and also the time of IP; as a model of institution civilization,[12] IP plays an important role in inspiring innovation and promoting the scientific progress and cultural prosperity. Therefore, Chinese IP system must maintain its superiority in this aspect, that is, promote the modernization of science and technology through modernization of legal system.

III. The Trend of New Civil Code's Making and Codification of IP

IP system is a product of the development of science and technology and commerce in 17th century. From 17th century to 19th century, it was IP growth time during which patent law, copyright law, trademark law were made in western successively. Those laws wasn't integrated in name of IP, but they appeared in single law. There was not a united IP code then, and no laws were incorporated into civil code. Continental countries followed the Roma law tradition and two civil codes was formulated in beginning and end of 19th century respectively: *The Civil Code of France 1804*, *The Civil Code of Germany 1900*, which imitated the Institutiones Iustinniani or Pandectae of Roma. Because their IP laws were prior to their codification of civil law, and the notion of IP law as a new property system was imported. Those civil codes didn't incorporate the IP into their civil law system.

Since 20th century, some continental law countries tried to incorporate the IP into their civil codes; their efforts set a trend in second civil law codification in the 1990s. The codes which have been completed or which planed to do so include: *Italian Civil Code in 1942*, *Holland Civil Code in 1992*, *Russian Civil Code in 1994*, and *Vietnam Civil Code in 1995*. According to the Holland legislation plan, the ninth chapter entitled 'right of intellectual product' should provide the IP. But they gave up the original plan because it was too hard in terms of legislation due to the fact that IP law involves many administrative, procedure and criminal provisions.[13] Other factors that discouraged the plan is the European Community legal system. Before the promulgation of the Ninth Chapter

[12] Liu Chuntian edition: *Intellectual Property Law*, Higher Education Press, 2000, p19.
[13] Xu Guodong: On Fundamental Structure of China Civil Code

of Holland Civil Code, EC enacted the unified trademark law, patent law, and other ordinances on IPR, which require Members to be in agreement with them in the law, and no exceptions are permitted.[14] In Russian legislative plan, the fifth book entitled 'Copyright and Creation Right', did not include patent right and trademark right. In fact, this book has not been finished till now, and Russian Patent Law and Trademark Law was promulgated in mode of single law.

The codification effort of above civil codes that contain IP book can be said to be an interesting experiment, but not good examples worth following. Those legislatives adopted two approaches: one approach is to incorporate all IP clauses into civil codes, which is no double a removal of location. In the IP laws, most of clauses of copyright are private law norm, total incorporation maybe good; but to industrial property, which contains much public law norm, it is very hard to deal with in terms of legislative technology (just thinking about Vietnam Civil Code). The other approach is that the codes contain some common applying norms extracting from the IP, while keeping the single laws. This approach keeps pureblood and formal orderliness of the private right law, but there is no much value in practice.

Different from above codification approaches, France followed the other way, that is, codification of special IP code. French Intellectual Property Code in 1992, which compiled 23 laws and regulations related to IP into a uniform code, which is the first IP code in the world. French Intellectual Property Code is not only fruits of IP legislation since French Revolution, but also is an institutional innovation that responds to the economic and technological development. The codified IP does not change its status of civil law ad hoc and its nature, there are two reasons: 1. Civil Law and Commercial Law is basic law, and the IP law is the law ad hoc in France. 2. French Intellectual Property Code presents a special mode of systematization of special laws. The code is not a collection of all regulations and norms that existed then, but is a systematized document, which coordinates the existing documents. In the making of IP Code, French legislator integrated and organizes the single regulations and the norms to meet the requirement as a code. But French Intellectual property omitted an important factor in codification that is, no common

[14] See Wu Handong: Copyright Laws of western Countries, China University of Political and Law Press, 1998, p333-335.

principle and norm applies to IP system. Maybe the French legislators did not or had no capacity design a General Provisions of IP code that is similar to the traditional civil code. As Doctor Huang Hui pointed out: "French Intellectual Property Code in 1992 was just a compilation of single IP laws and Norms, and each single law is independent with each other, the revision in 1994 meant to crack down on counterfeit still follows this approach".[15] Thus French Intellectual Property Code in 1992 can be seen as a compilation of single laws concerning IP and a systematization of special laws, and it doesn't change the status of IP law as a civil law ad hoc. In despite of its shortcomings, French legislative achievement is worth thinking great attention. It is said that Holland is going to make a separate intellectual property code.

Chinese legislators should use above two approaches for reference, in their lawmaking work. China Civil Code has finished its first draft; legislators are still consulting experts. So, how to deal with the IP system, is an unavoidable question. As to whether China Civil Code should take up IP system, proponents and opponents all stick to their arguments. Proponents proposed that the civil code should include the IP due to the following reasons: foreign countries have the precedents that provide the IP in civil code, and law of the General Principle of Civil Law of People's Republic of China also provide the intellectual property in Citizen's right under. Therefore, the IP should be a part of civil code. In the last, the author, together with scholars of civil law and IP scholars argued against that IP should be incorporated into civil code. After comparing with foreign legislative precedents, the author came to the conclusion that "all paradigmatic civil code doesn't cover IP, while all civil code that covers IP isn't thought as a paradigm."

The author attended the seminar held by the Law Committee of the Ninth NPC Standing Committee in Oct, of 2002, and was informed of the legislative interpretation by the drafters of the IP book. The IP book (draft) contains general principles, rights conferred, and Supplementary Provisions, totaling more than 100 articles. The author disagrees with this first draft, and gave some suggestions: the codification of IP should

[15] Huang Hui, translator's preface for *French Intellectual Property Code* Chinese version, Huang Hui (translated): French Intellectual Property Code (Legislative Part), Commercial Publish House, 1999.

take a two-step approach. The first step is for the coming Civil Code just to provide general principles of IP, and keep the single IP Laws. My argument is based on the following: 1. IP is an essential part of civil code owning to its nature, and the Trips recognizes that intellectual property rights are private rights, so it indicate its private nature that provides IP in principle in civil code. 2.Providing IP in principle consummates the private rights system, specially the property system, the integrated rights system in civil code will ensure the comprehensive protection of right of person. 3. Providing IP in principle in civil code, and keeping the Laws and regulation, make it convenient in practice, and does not disfeature the civil code. 4. Enacting the chapter of general provisions, will harmonize the whole IP system and enhance the interior cohesion of the code. The author's idea of "providing general provisions in civil code, and keeping the single laws" is different from "Book of Intellectual Property" of other countries'. At the China Intellectual Property Forum held in Shanghai at the end of 2002, authority form WIPO said that WIPO didn't agree with that IP is provided in Civil code in details, while it is feasible and helpful as well to provide the general principle. The second step is to codify the IP code under civil code. Civil code provides the fundamental provisions of IP, while keeping the separate laws and regulations. The fundamental provisions include: nature of IP, effective territory of IPR, subject matter of IPR, subject of IPR, rights conferred, limitation of IPR, application of IPR, protection of IPR, etc. compiling effective single regulations as chapters of IP code.

The choice of legislation style not only concerns the legal tradition, legal cultural orientation, but also relates to legislative skill, legislative rule, and it is often influenced by such factors as politics, economy, and science and technology. After studies on the legislative history and the status quo of some countries, the author maintains, no matter which way we take, codification is the only way for Chinese intellectual property legislation.

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