Introduction

Background

The number of ways in which patents are being utilized in the United States has increased dramatically in recent years. Traditionally, patents were viewed as corporate assets for the purpose of protecting a company’s prized innovation. More and more patent owners are using patents as commercial tools with which to build and thwart business relationships, assert market influence, and incubate new companies.

In the People’s Republic of China, intellectual property (IP) is a new legal and social concept. For instance, formal legislation for patents was first introduced in the 1980s and the Patent Law has been successfully amended three times, with the Fourth Amendments under consideration for the past several years. Although the core concepts behind IP in many aspects contradict the socialist ideal of pooled community resources, general social awareness and acceptance of IP rights in China has grown during the past several decades. Readers no doubt have read a fair amount of media reporting on the rampant counterfeiting and other infringing activities in China, but readers most likely have also read the paradoxical press reports...
regarding the phenomenal growth in numbers of Chinese patent applications, issued patents, and in other intellectual property rights. One of the objectives in this book is to reveal the story behind this growing stockpile of IP rights; the Chinese government has openly pronounced that the growth in numbers is not its final goal in IP policies, and that the future of IP in China will be in the commercialization and protection of the IP rights.

**Commercialization in the United States vs. China**

There is a close linkage between commercialization activities, such as licensing and acquisition of patents, and enforcement efforts in the United States. Commercialization success in the United States is usually backed by the threat of a lawsuit and a strong enforcement system through the courts. For historical reasons, the commercialization channels of IP rights in China have always been more commerce-oriented rather than enforcement-oriented; that is, in China, patents are applied to products, allocated to support licensing and sales, utilized to form the technology basis of new businesses, and used as conduits for introducing foreign technologies into China in exchange for a share of the Chinese market. The inherent emphasis on the commercial roles of patents in China, rather than as legal rights protected by the court system, is quite natural when the development of the IP infrastructure in China is taken into consideration. The Chinese patent system had a humble beginning starting in the 1980s. Compared to the West, there was little innovation. Compared to the West, China’s enforcement system was both incomplete and too complicated.
Compared to the West, China’s counterfeit industry wielded much more influence. Finally, underlying the Chinese socialist economy, there has always been a shared sense that innovative fruit, along with other resources, belongs to the community. Again, the notion of private ownership of IP rights runs counter to the socialist ideal of sharing common resources in a society. Therefore, IP protection was slow to gain acceptance among the public and within the court system. For all these reasons, patent rights have taken on different roles in Chinese society than they have in Western society.

Who Should Read This Book

This book is written to reach a wide audience. Although it will no doubt be an easier read for readers with either a background in intellectual property law or in Chinese law, the book is intended for anyone interested in patent licensing in China, including, for example, non-legal professionals in finance or executives in a company.

In addition to legal information, this book also highlights some hard-to-find anecdotal information usually passed around as “war stories” among colleagues. Together, we aim to give readers the necessary background and set the right expectations so that they may approach licensing negotiations from a position of strength and knowledge.

How to Use This Book

This book is intended to serve as an introductory reference guide to help readers navigate the various channels of IP commercialization in China.
The first chapter provides the foundation information such as historical background, regulatory framework, and enforcement infrastructure, which together govern the procurement, enforcement, and transfer of patent rights in China.

The later chapters provide channels of commercialization of patents in China in several contexts: corporate (ZTE), universities (Tsinghua University), and joint ventures.

Chapter 2, entitled “Intellectual Property Commercialization in China in View of Patent Commercialization,” is written by Marco Tong, a seasoned in-house IP licensing executive at the Chinese telecom giant ZTE. Marco gives his perspectives as a domestic corporate rights owner, providing an insider’s views on the definition, motivation, status, and policies behind the commercialization of intellectual property in China.

Chapter 3, entitled “Technology Transfer among Academic Institutions in China,” is written by David Ai. David was formerly with the City University of Hong Kong and is now the Chief Innovation Officer of the University of Hawaii system. In his chapter, David describes the unique ecosystem of technology transfer and university-industry partnerships within higher educational institutions in China, using Tsinghua University as a case study.

Chapter 4, entitled “Deal Dynamics for Intellectual Property Exploitation: Licensing, Joint Ventures, and Wholly Foreign-Owned Entities,” is written by Chris Bailey. Chris is the managing partner in the Shanghai office of the IP firm Rouse. In this capacity, he has assisted many foreign IP rights holders to invest in China over the past several decades. In his chapter, Chris describes the roles and risks associated with investing and developing intellectual property rights in foreign-invested entities in China.
Our Next Steps

First, the Sino-U.S. relationship is undergoing profound changes at the moment as the Trump administration engages in intense trade negotiation with China to open up a new relationship between the two countries with major deviations from the guiding principles of the past several decades. China is making rapid changes to its legal and other infrastructure frameworks to accommodate the changes. Therefore, readers are advised to check for updates frequently.

Furthermore, we understand that each type of intellectual property rights—patents, trademarks, copyrights—shares some commonalities, and yet each also has its own unique set of legal considerations. The writers of this book decided at the onset that we would restrict our discussions to the commercialization of patents. Given patents’ rigorous disclosure requirements and arguably the most robust protection scope, we focus on patents only for the first edition of the book. If well received, we will be adding other IP rights to the discussion in future editions.