

# INTRODUCTION

*Elizabeth Chien-Hale*

In 2000, I went to Hong Kong as an enthusiastic senior associate for an international law firm to launch its patent practice. While the firm was doing well with companies based in Hong Kong, China was our end goal, and the sky was the limit. However, reality set in quickly. In those days before China's entry into the World Trade Organization (WTO), the Chinese IP regime was out of step with international standards. Some of the major Chinese companies we approached were still unsure what constituted intellectual property (IP) rights, let alone how to use them to further their business objectives.

China has made rapid progress since then. To obtain approval into the WTO, which finally happened on December 11, 2001, China made all the necessary amendments to its patent, copyright, and trademark laws. China also revised relevant Implementation Rules covering different areas of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to bring all such measures into full compliance with TRIPS protection of trade-related intellectual property rights and undisclosed information.

Upon my return to the United States from Hong Kong, I volunteered within the Intellectual Property Law section of the American Bar Association. My first China focused project within the section was to bring a delegation of ABA members on a fact-gathering trip to China in 2004. During the trip, we targeted three cities: Beijing, Shanghai, and Guangzhou. We visited various IP agencies including the State Intellectual Property Office (also known as the Chinese Patent Office), Trademark Office, National Copyright Administration, and the Supreme People's Court. We also held seminars to exchange our views with our Chinese counterparts. Finally, we conducted our own informal survey by visiting the streets and talking to the vendors. Most delegates reported at the end of the trip that they felt a tremendous sense of energy and commitment from Chinese government officials and

---

Elizabeth Chien-Hale is Chair of the PRC Task Force of the ABA Section of Intellectual Property Law.

practitioners to create and refine China's IP framework, despite the unfortunate reality of general street-level disregard for intellectual property rights.

Besides organizing delegation visits to China and hosting Chinese delegations when they come to the United States, the ABA Sections of Intellectual Property Law and International Law have joined hands whenever opportunities arose in forming several task forces to provide comments to the issued amendments on patent, trademark, and copyright laws by the various Chinese government agencies, including the National People's Congress and the State Council. Our volunteers worked tirelessly, often under strict deadlines and limited resources, to produce our comments, which generously shared our American perspectives and experiences in protecting intellectual property rights.

This book is yet another effort by the ABA Section of Intellectual Property Law to inform our members regarding intellectual property developments in China. This book is written for a seasoned practitioner who has a firm grasp of U.S. law; it is complete with chapters on all aspects of intellectual property protection, including patents, trademarks, copyrights, trade secrets, and antitrust.

Readers will notice that despite full compliance with the TRIPS standards, the Chinese IP system still maintains some "Chinese characteristics." Enforcement power is divided between two powerful and independent branches of the government, which would be a surprise to American practitioners, who are more accustomed to using the judicial branch as the primary way to address IP infringement issues. Another example is seen in China's continuing concern for abuse of intellectual rights as a way to suppress local companies by rich and powerful foreign patent owners.

After years of government-guided pushes to increase the numbers of IP filings and registrations by Chinese enterprises, China is now switching its emphasis from numbers to quality or use/monetization of the granted rights. As Chinese companies have matured in their general sophistication of international practices, Chinese laws have also been further amended since the 2001 amendments were made to all IP laws. Again in 2008, the Patent Law was substantially amended, and the Trademark Law was revised in 2013. We have seen several drafts of the amendments to China's Copyright Law and believe it too will be officially amended in the near future.

I hope that by the next edition of this book, we will be able to report even more good news for IP owners conducting business in China.