

PREFACE

Within only 30 years, the People's Republic of China has developed a full-fledged and functioning patent system which fulfills international standards and the policy needs of China: In the course of its emergence, the Chinese legislature and judiciary had constantly been under the challenge to align foreign demands to adhere to international standards with the domestic interest. The present patent system forms such a compromise which makes utmost use of the remaining flexibilities under the international treaty system, so as to accommodate concerns related to national technological development.

The present book aims to provide the reader with a comprehensive overview of Chinese patent law and practice, and the challenges posed by the Chinese patent system. The distinctive feature of the book is that it provides an introduction to the political and legal background of important patent-related issues and combines comprehensiveness and in-depth reasoning on current challenges faced by practitioners in their daily work. That is, the general structure of the book follows the structure of traditional treaties on patent law, but in its subchapters our authors concentrate on certain aspects which have turned out to be of high practical relevance or which are currently debated.

We, the editors, are proud to have gathered together a group of highly renowned specialists in their fields, predominantly practitioners who are active in China but also a number of academics and judges. All of them have displayed not only their China-related experience but also their capability of reflecting their observations on legal and practical issues in China against the situation in Europe and other important jurisdictions.

The contributions bring to light increasing levels of legal certainty in various areas of the patent examination process and the enforcement of patent rights in China. Be it the communication between examiners and applicants in the course of patent examination or the mode of claim interpretation in the course of patent litigation, it becomes obvious that in many areas, administrators and judges base their judgments on established practices or guidelines, for example, the Supreme People's Court's interpretations on certain aspects of patent litigation, which enshrine such practices. Even though not all of these established practices are in the very interest of users, one should not underestimate the positive effects of such enhanced transparency and predictability of administrative and judicial decision making on both Chinese and foreign parties.

Finally, it should be noted that whereas the focus of our observations is on the People's Republic of China, we have also striven for comprehensiveness in regional respects. Therefore, the book includes overviews of patent legislation and practice in the Special Administrative Regions of Hong Kong and Macau, and on the challenges

posed by the recent reforms to the patent system of Chinese Taipei (Taiwan). Furthermore, the book provides an introduction to the utility model and design protection systems of China which complement the patent system.

The editors express their own views and would like to stress that any opinions expressed in this book are those of the respective authors and do not necessarily reflect the views of the editors or their employers.

Finally, the editors would like to thank the staff and management of Edward Elgar for investing all their editorial expertise to polish this book into publishable shape.

The Editors

Peter Ganea and Stefan Luginbuehl

Note: Chinese names are written in traditional form throughout, that is, family name placed first, followed by the given name. However, names of Chinese authors of publications in Western languages are quoted as they appear in connection with the respective publication.