Foreword

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For over twenty years, I have been involved with trial work for Intellectual Property Rights (IPR) disputes and have witnessed over this time an important period in the development of IPRs in China. My experience indicates a very strong demand for the effective protection of IP worldwide. Although the modern IPR system in China started quite late, China spent three decades completing the modernization of its IPR system, whilst many Western countries achieved the same over two to three hundred years. In this respect, China's achievement has attracted worldwide attention.

The development of China's IPR system draws on the useful experience of other countries' IPR development. However, due to its own national conditions and the overall impact of its legal structures, the development of Chinese IPR law still retains many Chinese characteristics. In the process of global economic and trade integration, the differences between Western legal systems and China's systems and other interests have gained prominence, and this collision has at times created conflict that may lead to misunderstanding and friction. There is a real need therefore to understand and appreciate these differences objectively and accurately in order to maintain the legitimate rights and interests of all.

Using legal means to protect the interests of all parties, we need to have a full understanding of the rights of IP owners, specific remedies for infringement, and a country's legislative and judicial practice. In 2007, I met with the US chief IP Counsel of a major multinational at China's Supreme People's Court, and briefed him that China had been dealing with approximately 15,000 civil IPR cases a year, of which 95% were Chinese domestic litigation cases between Chinese companies and individuals, with less than 5% representing litigation between foreign and Chinese companies. The Chief Counsel was very surprised by this news because he thought the majority of IPR infringement cases in China would be cases with the foreign company as plaintiff suing Chinese companies. He kept asking: 'the figure of 95% of domestic cases is very hard to believe. Do these cases cover all aspects including patent, trademark and copyright?'

Are Chinese companies willing to pay so much attention to self-developed patents?' I answered his question in detail and explained to him that the legal documents of these cases could be found on the relevant websites. He strongly recommended that the Chinese Government should make greater efforts to advertise its IPR development to the outside world in order to generate greater understanding of China's legislative instruments and judicial system on the protection of IPRs.

It has become very necessary to widely communicate to the outside world the great improvements and effort legislators have made in improving the IP system in China. China has a unique IPR protection system that involves both administrative and judicial protection. In this two-track protection system, judicial protection is dominant. With reform of the judicial system, IPR judicial protection will play an increasingly important role, assisted by administrative protection, which is better at dealing with infringements and is more efficient at preventing counterfeiting, piracy and other forms of infringement. Significantly, China's IPR administrative and judicial protection systems are not in conflict, but instead cooperate and complement each other.

In recent years, new issues are arising with the use of IP on the internet. Copyright in digital content has attracted a great deal of discussion. The obligation of internet service providers and the determination of their infringements are contentious issues, and this has generated much debate. In my view, an inappropriate response to this problem could cause further infringement, harm the rights' owner's interests or even harm the development of the internet information industry and the public right of access to information. According to Article 3 of Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Copyright Disputes over Computer Networks (2000, amended in 2003 and 2006), 'In case an Internet Service Provider is involved in any other person's act of infringement on copyright through the network, or abets any other person to commit or assists any other person in committing an act of copyright infringement the people's court shall subject the Internet Service Provider and other doers or persons directly committing the infringing act to contributory infringement liabilities according to the provisions of Article 130 of the General Principles of the Civil Law'. This removes the concerns of the IP rights owner, as long as the internet service provider making the infringement is at fault; no matter whether the ISP is simply providing the hardware used to access content or provides the content directly, the ISP will have to bear civil liability. By contrast, if the ISP complies with the law, the ISP will enjoy the principle of being a 'safe harbor' and will be exempt from liability. Chinese judges have already tried to handle P2P (peer-to-peer) cases under the principle

of ‘joint liability’ under China’s civil law principles. As a result, China’s laws and judicial practice of IPR protection in the electronic environment is attempting a unique and new way of dealing with online infringement. Because China is a statute law country, the judge always acts ‘according to the law’ in seeking the best way to resolve disputes under the existing legal framework, and by issuing judicial interpretations to constantly update the law. Also, the precedents of the Supreme People’s Court plays an increasingly important guiding role, by making abstract legal norms become ‘flesh and blood’ and actively demonstrating the integrity of Chinese IP law. Therefore, for internet IP disputes, foreign readers should not only know the basic legal provisions, but must also pay attention to China’s latest judicial precedents.

Multilateralism and globalization of trade has brought more opportunities to the Chinese economy, while a variety of competitive disputes have inevitably followed. The handling of unfair competition cases has always been a part of China’s IPR protection system, including trade secrets, business names and well-known product names, packaging and get-up etc. In 2008, in order to balance the relationship between market players who enjoy monopoly positions and smaller undertakings, China adopted the Anti-Monopoly law of the People’s Republic of China. In our Anti-Monopoly Law, we specially provide for regulating IP monopolistic behavior. Disputes arising under this law are heard by Chinese IP tribunals, because of the close relationship between IP rights and monopolies. All of this demonstrates that the increasingly complex and expanding scope of the Chinese IP system will require further progressive development.

The concept and awareness of IP in China has become increasingly popular, and many foreign companies are gaining better access to China’s IP legislation and enforcement information. At the same time, it is important to introduce China’s IPR legal protection system and law enforcement practices accurately in English, so that foreign friends who come to China for investment and cooperation have a better understanding of Chinese law. This book, *Chinese Intellectual Property and Technology Laws*, will play an important role as a bridge in introducing China’s IP and technology laws to the world from an objective and practical viewpoint, with an accurate and comprehensive discussion of modern Chinese law. The book not only describes general copyright, patent, and trademark law, but also covers unfair competition, trade secrets, anti-monopoly law regarding IPR rights, and the role of IPRs in China’s trade laws. The book not only describes traditional areas of IPR, but also the protection of IP in the electronic environment, including a discussion of information technology, computer software, telecommunications and e-commerce

laws. This kind of panoramic view of China's IPR legislative environment is very rare and precious, and it is even more commendable that many of the book's contributors are some of China's leading IP legal experts and academics with a deep understanding of Chinese IP law, with their own unique insights on statute and case analysis, and who can help readers gain a comprehensive grasp of the IP legal framework and the model of IP protection in China. This book shows the world a unique legal perspective and the capability of in-depth insight, which has extremely far-reaching significance for the world in understanding Chinese IP as well as various other aspects of Chinese technology, trade and competition law.

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