

Editorial

On 24 October 2017, the 19th Chinese Communist Party Congress concluded in Beijing. Held every five years, this historical and highly anticipated event has not only ushered in leadership and policy changes, but has also sent a strong message to the outside world that China is eager to assume greater world leadership. Today, no country can attain leadership without strengthening its economic development and technological capacity. Although China was backward when it was re-opened to the outside world in the late 1970s, the past three decades have seen the country making breathtaking progress.

Based on the statistics provided by the State Intellectual Property Office (SIPO), in 2016 China processed nearly 3.5 million patent applications, including over 1.3 million applications for invention patents. Foreign analysts generally find internal government data suspect. Nevertheless, the SIPO statistics have been corroborated by data compiled by international organizations. According to the World Intellectual Property Organization, China was ranked third and fourth in the world in 2016 based on international applications through the Patent Cooperation Treaty and under the Madrid system, respectively. For that year, the European Patent Office also reported that about 15 per cent of its patent filings originated from China.

Notwithstanding these impressive statistics, policymakers, commentators and industry leaders continue to criticize intellectual property laws and policies in China – at times heavily. For example, they lament how the Chinese patent system has focused more on quantity than on quality. In August 2017, the US Trade Representative also launched an investigation on China under section 301 of the Trade Act of 1974. This ongoing investigation targets the country’s laws, policies and practices in the areas of intellectual property, innovation and technology development.

When these two diametrically opposed views are considered together, the debate on intellectual property developments in China strongly resembles the debate on whether the proverbial glass is half full or half empty. Having a highly polarized debate is indeed common with respect to law and policy discussions on China – both within and outside the intellectual property field. Whether the focus is on improvements or disappointments will largely depend on one’s perspective. What is often overlooked in the debate, however, is what type of water this proverbial glass contains.

To help us examine the rapidly changing Chinese intellectual property landscape and to take stock of the country’s many important historical developments, this special issue brings together leading scholars in the field. Some of the contributors originated from the Sino-Finnish comparative research project on ‘Legal Transplant for Innovation and Creativity’, from which the idea of this special issue emerged. That project was jointly conducted by the Hanken School of Economics and the University of Helsinki in Finland and the Chinese Academy of Social Sciences and Shenzhen University in China. To ensure full coverage of the issues involved, the line-up of contributors has since been expanded.

This special issue opens with an introductory article exploring what it means for the Chinese intellectual property system to hit 35. Will this system approach its prime or will it face a hard-to-predict mid-life crisis? Professor Ken Shao of the University of Western Australia then shows provocatively why the neoliberal capitalist view of the global intellectual property regime fails to explain the design and implementation of the strategic patent framework in China. Professor Li Mingde of Tongji University follows with

an authoritative analysis of the various processes that have been used to enact or amend Chinese intellectual property laws.

The second half of this special issue turns to more substantive legal issues. Professor Xie Huijia of the South China University of Technology offers a highly informative empirical study of criminal copyright infringement in China, drawing on over 1500 cases that were concluded between January 2002 and December 2015. Associate Professor Dong Huijuan and Dean Lin Xiuqin of Xiamen University then discuss the major changes to the Chinese trademark system, focusing on the third, and latest, amendment to the 1982 Trademark Law. Finally, Zhang Liguo of the University of Helsinki and Professor Nari Lee of the Hanken School of Economics provide a very timely analysis of the specialized intellectual property courts in Beijing, Shanghai and Guangzhou, which were established in December 2014.

Taken together, these six articles cover not only the latest developments in China surrounding the three main branches of intellectual property rights – copyright, patent and trademark – but also those involving the legislative, policy and judicial arenas. It is my hope that such a comprehensive coverage will help develop a more holistic, sophisticated and nuanced understanding of the past three decades of intellectual property developments in China. Such an understanding is particularly important considering that not only have global intellectual property developments influenced China, but Chinese intellectual property developments have also begun to influence the globe. I hope you will enjoy reading this special issue.

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Guest Editor
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