



The Enforcement of Intellectual Property Rights in China – A Statistical Perspective



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Introduction

- Administrative Model
- Judicial Model
- Others

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Administrative Enforcement of the Patent Law

- Who?
 - A. The administrative authority for patent affairs (PAA under the State Council – nation-wide work, PAA under provinces – their respective jurisdictions, Article 3 of the Patent Law (2000); administrative enforcement power: order to stop, fine, etc., but mediate on damages, Art. 57 and Art. 58 of the Patent Law (2000); not specify investigation power)
 - B. The owner or holder of patent or other interested party
- What?
 - A. Passing Off – passing off the patent of another person as one's own (Art. 84 of the Rules for the Implementation of the Patent Law (2003))
 - B. Counterfeiting – passing a non-patented product, or a non-patented process off as patented product or patented process (Art. 85 of the Rules (2003))
- How?

The number of cases dealt with by the PAA in China (1998-2004)

Year	Re-examination		Invalidation		Patent disputes		Passing off / patent counterfeiting patent
	Received/ratio (%) of increase over the previous year	Concluded	Received/ratio (%) of increase over the previous year	Concluded	Received	Concluded	
2004	2768/52.7	1447	1904/5	1667	1455	1215	1983/345
2003	1813/89	1235	1813/3.4	1617	1517	1237	1873/164
2002	961/56	785	1752/33.1	---	1442	1291	1679/177
2001	616/11	625	1316/10.2	1480	977	888	413/---
2000	555/20	817	1194/52	1561	802	718	---
1999	463/44	401	783/23.1	795	791	641	2071
1998	322/6	258	636/15.6	398	612	465	2086

Administrative Enforcement of the Trademark Law

- Who?
 - A. The administrative authority for the control of industry and commerce (SACIC): In addition to administration power and enforcement power, they enjoy investigation power, Art. 53, Art. 54, Art. 55 of the Trademark Law (2001), but mediate on damages (Art. 53 of the Trademark Law)
 - B. Owner of trademark or other interested party
- What?

Infringing activities against trademark right (Art.52 of the Trademark Law)
- How?

Statistics (see the table)

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The number of trademark cases (infringement and passing off) dealt with by China's SACIC (1996-2004)

Year	Cases accepted	Cases concluded	Cases unsettled	Confiscation (set of representations / number of tools used for infringing acts / tons of infringed goods destroyed)	Fine (number of cases/amount of money fined)	Administrative order to pay compensation (number of cases/amount of money ordered)	The number of cases/suspects transferred to judicial authorities
2004	40171			38951800/280781/5638	268 million	N/A	96/82
2003	26488	26023	465	58395994/15597/3541	24727/196394093	66/1073133	45/52
2002	23539	23109	420	78979514/14882/3529	21710/135612506	209/3666531	59/78
2001	22813	21960	853	250000000/14004/2227	N/A/210000000	N/A/3343400	86/88
2000	22001	11313	688	153607455/10252/1143	18870/100689972	236/3436330	37/45
1999	16949	16130	819	134307482/4403/1912	13825/76686679	532/5739072	19/21
1998	14736	14141	595	323937005/19340	12121/65354764	410/4999741	26/35
1997	15321	14698	623	159931704/4826	12830/62443970	417/5100403	39/57
1996	16209	15586	623	281539577/5043	14282/60527311	410/5402760	56/57

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Administrative Enforcement of the Copyright Law

- Who
 - A. State Copyright Agency (SCA), enforcement power strengthened, Art. 47 of the Copyright Law (2001),
 - B. Owner of copyright or other interested party
- What

Illustration of the infringing acts against copyright, Art. 47 of the Copyright Law (2001)
- How

See the statistics

The number of copyright infringement cases dealt with by SCA in China (2000-2004)

Year	Cases accepted	Cases concluded	Confiscation (unit of set)	Mediation/percentage	Administrative penalties/percentage	Transferring to judicial organs/percentage
2004	9691	9499	85,050,000	1363/14%	7986/84%	101/1%
2003	23013	22429	12,900,000	1173/5%	21032/94%	224/1%
2002	6408	6107	67,900,000	721/11.8%	5250/86%	136/2.2%
2001	4420	4306	62,160,000	605/14%	3650/85%	69/1.6%
2000	2457	2277	79,126,173	479/21%	1726/75.8%	103/4.5%

Customs Enforcement of Intellectual Property Rights

- Who
 - A. Chinas Customs authorities, Art. 2 of the Regulations (2003)
 - B. IPRs owner (applying for recording of IPRs, a detention of suspected goods, pre-proceeding injunction or property preservation)
- How

No systematic statistics available except the year 2004, which is 1050/2004, 1009 cases involved trademark infringement, 26 cases were infringement of patent, 16 cases related to the infringement of copyright

Injunctions and Provisional Measures

- Amendements: Article 61 of Patent Law (2000), Article 16 of the SPC Stipulations (2001), Articles 57 and 58 of the Trademark Law (2001), Articles 49 and 50 of the Copyright Law (2001), Articles 26, 27 of the Regulations on Computer Software (2001)
- Who (People 's Court, IPRs owner or holder or interested party)
- How

No systematic statistics available

Civil Remedies

- Who
 - A. People's Courts
 - B. IPRs owner or holder or interested party
 - What
 - A. infringing activities, Art. 46, Art. 47 of the Copyright Law (2001), Art. 52 of the Trademark Law (2001), etc.
 - B. Principle of attribution: fault, non-fault, burden of proof, damages or other forms of civil liabilities?
 - C. Evidence
 - D. Damages: loss suffered or profit earned, statutory compensation, reasonable cost
 - E. Forms of civil remedies: destruction of the infringing copies?
 - How
- See statistics

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The number of IPRs cases (ownership, infringement and others) accepted and concluded by the first instance courts in China (1989-2003)

Year	Cases accepted	Cases concluded	Mediation/ratio	Judgment/ratio	Reject/ratio	Withdrawal/ratio	Other
2003	6983	6860	856/12.4	2929/42.7	184/2.6	2533/32.3	358
2002	6201	5649	692/12	2514/44.5	234/3.8	1893/30.5	316
2001	1749	1664	221/13	770/46.3	40/2.3	486/28.8	147
2000	1496	1534	243/15.8	685/44.6	55/3.7	452/30.2	99
1999	1247	1098	180/16.4	474/43.2	27/2.2	339/27.2	78
1998	1048	1074	245/22.8	488/45.4	16/1.5	244/23.3	81
1997	1237	1332	432/32.4	436/32.7	Court Ruling 436	Transferring 28	N/A
1996	1036	979	342/34.9	381/38.9	Court Ruling 239	Transferring 17	N/A
1995	882	883	346/39.1	277/31.4	Court ruling 245	Transferring 15	N/A
1994	625	516	204/39.5	147/28.5	Court ruling 139	Transferring 26	N/A
1993	543	548	206/37.6	179/32.7	Court ruling 148	Transferring 15	N/A
1992	612	578	352/60.9	97/16.8	N/A	N/A	129
1991	435	421	175/41.6	124/21.8 (including court ruling)	N/A	N/A	112
1990	301	275	117/41.6	58/20.1	N/A	N/A	70
1989	336	289	127/47.4	58/20.1	N/A	N/A	94

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Judicial Review

- Amendments to laws
- Two kinds of judicial review
- No systematic statistics available

Criminal Remedies

- Amendments to laws
- Seven types of criminal offences against IPRs (Articles 213-220 of the Criminal Law (1997))
- Statistics: a research report by judges from SPC
- Conclusion: the number of IPRs related criminal cases and the suspected criminals grow quickly each year: 128/213 (1998), 175/301 (1999), 248/379 (2000), 314/509 (2001), and 408/702 (2002)

The statistics of the IPRs related criminal cases (1998 – 2002)

Number/person	1998	1999	2000	2001	2002	Total
Crimes of counterfeiting registered trademarks	50/73	54/96	86/141	126/209	176/286	492/805
Crimes of selling goods bearing counterfeited registered trademarks	18/35	46/68	70/103	47/75	57/90	238/371
Crime of producing and selling representations of registered trademarks without authorization from the trademark owner	26/41	35/64	60/84	93/135	121/193	335/517
Crime of forging another person's patent		2/3	6/7	6/10	2/4	16/24
Crime of infringing upon copyright	22/33	12/16	11/14	15/31	22/61	82/155
Crime of selling infringing reproductions	1/1	3/4		2/4	3/4	9/13
Crime of infringing upon commercial secrets	11/30	23/50	15/30	25/45	27/64	101/219
Total	128/213	175/301	248/379	314/509	408/702	1273/2104

Comparison of the number of IP cases dealt with by China's IP administrative authorities with that of People's Courts (2000 – 2003)

Year Institutions	2003	2002	2001	2000
Court	6983/6860	6201/5649	1749/1664	1496/1534
SACIC	26488/26023	26488/26023	22813/21960	22001/11313
SCA	23013/22429	6408/6107	4420/4306	2457/2277
PAA	1517/1237(D), 1873/164(P.C.)	1442/1291 (D), 1679/177 (P.C.)	977/888 (D), 413/N/A (P.C.)	802/718 (D), (P.C.) N/A
Percentage (%)	11.6/12	14.6/14.4	6/N/A	N/A

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Conclusion

- One feature of Chinese enforcement of intellectual property rights – both administrative and judicial models
- Both administrative and judicial models are strengthened
- Comparatively, administrative model plays much more important role than the judicial one
- The number of each type of IPRs cases increases every year. This may indicate counterfeiting or piracy increasing, or may be the result of improvement of enforcement system
- No systematic statistics of each type of IPRs cases available

