

**CONSULTANCY STUDY ON
SOCIO-ECONOMIC-POLITICAL TRENDS
IN PAN-PEARL RIVER DELTA REGION**

SPECIAL REPORT (NUMBER 1)

**“ENHANCING COOPERATION IN
INTELLECTUAL PROPERTY RIGHTS PROTECTION
BETWEEN HONG KONG AND
THE PAN-PEARL RIVER DELTA REGION TO
PROMOTE REGIONAL ECONOMIC GROWTH”**

PART I

COVERING FUJIAN, JIANGXI, HUNAN, AND HAINAN



**CENTRAL POLICY UNIT
HONG KONG SPECIAL ADMINISTRATIVE REGION**

Pan-PRD Position

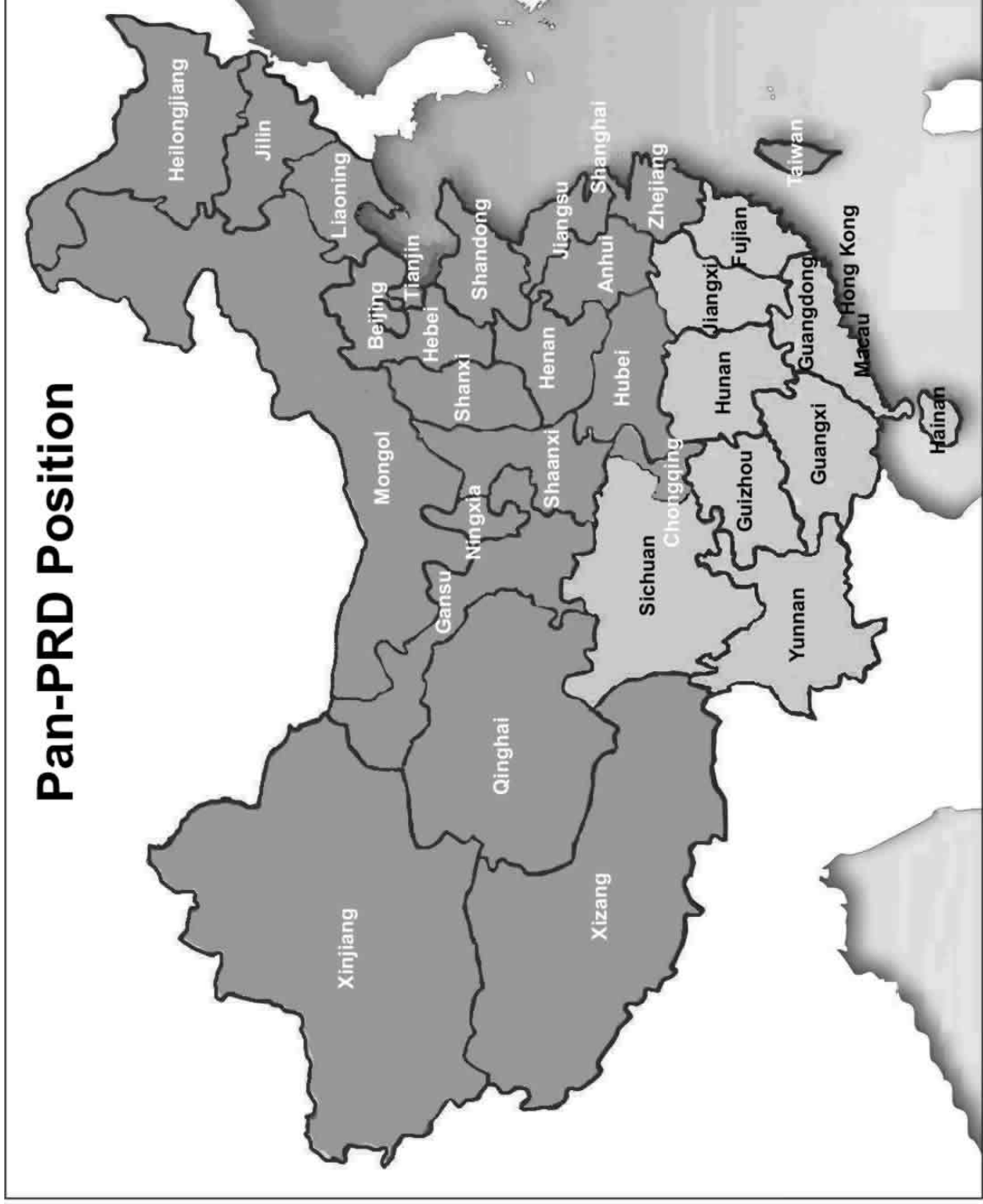


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I. Executive Summary

1. In recent years, the Pan-PRD has made significant achievements in works related to intellectual property rights (IPR), with the execution of IPR rising steadily each year and accounting for a relatively large proportion of the national total. This reflects the vast market potential for the development of IPR intermediary services in the Pan-PRD region. Hong Kong IPR agents are thus faced with unprecedented opportunities in penetrating the Mainland market. With in-depth knowledge of the common law system and familiarity with international IPR practices, they can join hands with partners in the nine Pan-PRD provinces/region to develop business in the Mainland.
2. With growing capability in scientific innovations, the Pan-PRD region has shown significant progress in exercising patent rights. From the inception of patents application in 1985 until the end of 2004, the State Intellectual Property Rights Office (SIPO) had granted 334,339 patents to the Pan-PRD region, including Hong Kong and Macao, accounting for 30.6% of the national total. As one of the more developed provinces among the nine Pan-PRD provinces/region, Guangdong had been granted 172,554 patented items as at the end of 2004, the highest in Pan-PRD and accounted for 51.6% of the region's total.
3. As the Mainland society becomes more aware of the concept of trademarks, trademark registrations in the Pan-PRD have increased rapidly in recent years. In 2003, the total number of trademark applications and registrations in the Pan-PRD region including Hong Kong and Macao reached 150,392 and 75,563 respectively, each accounting for more than one-third of the national total. The trend is consistent with the Pan-PRD's status as the country's leading exporter and the role of Guangdong's PRD and Fujian's southeastern region as the world's major manufacturing processing bases.
4. The development of the Pan-PRD region in the copyright market also stands out. In 2004, the quantity of copyrights imported and exported by the nine provinces/region reached 1,097 and 64 types respectively, accounting for 9.3% and 4.7% of the national total. Imports of audio and video products for entertainment took up major shares in the country, accounting for 30.5% and 56.6% of the national total respectively. In terms of quantity, imports of copyrights by the nine Pan-PRD provinces/region were dominated by books, which reached 724 types and accounted for two-thirds of the region's total.
5. As the Mainland system of IPR is relatively new, the society's concept of respecting IPR is still relatively weak. Violation of IPR is commonplace. Besides, the

imbalance in the development of regional economies and markets has led to wide discrepancies in the execution of IPR laws. Some local governments eager to boost the development of their economies and sustain employment have tolerated and protected violations of IPR, leading to the serious phenomenon of inadequacy in IPR protection in the Pan-PRD region.

6. In 2003, the Pan-PRD Industry and Commerce Administration units at different levels investigated into a total of 11,571 cases related to violations of trademarks, accounting for 30.9% of the national total. Of this sum, 8,240 cases involved counterfeiting of trademarks, happening mainly in the country's manufacturing processing bases of Guangdong and Fujian. Violation of copyrights is also relatively serious among the nine Pan-PRD provinces/region. In 2004, the Pan-PRD Copyright Administration units at different levels confiscated a total of 33.43 million pirated items. The more rampant cases involved illegal duplication and sales of electronic publications as well as smuggling of pirated audio and video products in Guangdong.
7. Currently, illegal activities involving violations of IPR are rampant between the Mainland and Hong Kong. To safeguard the IPR of Hong Kong enterprises in the Mainland, Hong Kong businesses should promptly register their trademarks and patents when entering the Pan-PRD market. Hong Kong and the eight Pan-PRD provinces/region should also make reference to the successful experience of Hong Kong-Guangdong cooperation and establish a network for coordination and communication, to counter cross-border violations of IPR through conducting regular meetings, exchanging intelligence, and undertaking joint actions.
8. Beginning 2004, Fujian has followed the requirements imposed by the Supreme People's Court to transfer all the first trial of IPR cases to the Intermediate or Higher Courts in order to improve the quality and efficiency of the hearings. Through providing better judiciary safeguard, the move will encourage transformation of scientific research results into commercial products and innovations, which would help increase the province's overall competitiveness. As IPR violations remain rather serious in China, Fujian's stepping up in judicial efforts to safeguard IPR rights would have meaningful implications to Hong Kong enterprises intending to develop the Fujian market. These developments are worth noting.
9. To promote advancements in science and technology, Jiangxi has launched a special fund to subsidise patent applications to encourage patenting of inventive and innovative products. As the subsidy scheme gives priority to inventions with higher technology content and innovative elements, the composition of patent applications in Jiangxi has improved significantly. Both the quantity and quality of patent applications have witnessed breakthroughs, resulting in an increase in the demand for

quality patent intermediary services. This provides Hong Kong patent agents, which have extensive experience in the international market and are familiar with the legal systems of the US and UK, with new opportunities for development.

10. In the past two years, Hunan has aggressively promoted the protection of new plant varieties. Through transferring plant variety rights and granting licenses to enterprises to use these rights, plant breeders have been able to obtain substantial funds for development. As Hunan is a major agricultural province, the breeding of farm crops is crucial to the income earning of the tens of thousands of rural residents and to social stability, hence spans far and wide impacts on the economy. Through promoting agriculture development and raising the incomes of Hunan's rural residents, the protection of plant varieties has significant implications on the business and investment environment of Hunan and is worth the attention of Hong Kong investors.
11. In Hainan, a large number of famous trademarks have recently been squatted, causing serious problems to enterprises as the intangible assets that they had created over the years were lost overnight. Hong Kong enterprises selling branded products in the Mainland should be aware of this trend and take caution against it. When developing their markets in the Mainland, Hong Kong enterprises should first register their trademarks. They need to be familiar with the relevant laws and procedures, so that they can complete the registration of their trademarks in the shortest duration of time. In this way, Hong Kong enterprises would be able to avoid losses that may be incurred just because someone else registers their trademarks ahead of them.

II. Southeastern Region

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Significant Achievements in Intellectual Property Rights Administration in Pan-Pearl River Delta

In an era of global economic integration and rapid technological advent, the overall competitiveness of a country or region is increasingly dependent on its innovative capability and the Intellectual Property Rights (IPR) it owned. IPR system and protection have thus become essential components of a country or region's business environment, having significant influence in particular on the attraction of foreign funds into enterprises' research and development projects and technology transfers. Vast investments in high and new technologies will flow into regions with a sound IPR environment and a high level of protection.

Intellectual Property Rights

Intellectual property rights are the rights given to people over the creations of their minds. According to Article 2 of the World Intellectual Property Organisation¹ Convention, intellectual property shall include the rights relating to literary, artistic and scientific works; performances of performing artists, phonograms and broadcasts; inventions in all fields of human endeavor, scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The scope of IPR specified by Article 1 of Part I of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights² (TRIPS) also includes undisclosed information. It mainly refers to the business secrets such as operation and technical secrets possessed by industrial and commercial operators. In addition, the Agreement has incorporated layout-designs of integrated circuits into the scope of IPR. With rapid development in scientific technologies in recent years, the scope of IPR protection has been expanding. New intellectual creations like computer software, bio-engineering technologies, genetic technologies and new plant varieties are also universally accepted targets for IPR protection.

The development of an IPR system began relatively late in China, but progress has been fast. Since the implementation of the reform and opening-up policy in the late 70s of the 20th century, China has made significant achievements in the area of IPR protection. A

¹ Please refer to the description of the World Intellectual Property Organisation below.

² Please refer to the description of the Agreement on Trade-Related Aspects of Intellectual Property Rights below

comprehensive legal and regulatory system consistent with international prevailing rules, as well as a sound and co-ordinated work system and enforcement regime have been put in place, signifying that marked progress was made in the development of an IPR system. The need to expedite the development of an IPR system is not only required by the new situation of China's integration into the international community and its accession to the WTO, but is also prompted by internal needs such as economic system transition, economic development and boosting the nation's competitiveness.

World Intellectual Property Organisation (WIPO)

With headquarters in Geneva, Switzerland, WIPO is one of the 16 specialised agencies of the United Nations system of organisations. It currently has 182 member states, and administers 23 international treaties dealing with different aspects of intellectual property protection. WIPO carries out a rich and varied program of work through its member states and secretariat, namely to harmonise national intellectual property legislation and procedures; to provide service for international applications for IPR; to exchange intellectual property information; to provide legal and technical assistance to developing countries and other countries; and to facilitate the resolution of private intellectual property disputes. Since joining WIPO on 3 June 1980, China has all along maintained a good co-operative relationship with the Organisation. China is now member of the Coordination Committee, Program and Budget Committee, Premises Committee, Committee on Industrial Property Development and Cooperation and Permanent Committee on Industrial Property Information under WIPO. The WIPO Asian Regional Symposium was held in Hong Kong on 2 June 1998.

Implementation of State IPR System

As far as the "9+2" members of the Pan-PRD region are concerned, Hong Kong and Macao, as special administrative regions, are jurisdictions with independent legal system of IPR, whereas the nine Pan-PRD provinces/region in the Mainland are local councils, not jurisdictions, which do not have independent legislative power in respect of IPR and are primarily responsible for implementing the IPR system of the state.

Since 1983, China's system of laws and regulations with regard to IPR protection has made continued improvement following the promulgation and enactment of laws and regulations covering the key areas of IPR protection, such as the Patent Law, the Trademark Law, the Copyright Law, Regulations on the Protection of Computer Software, Regulations on Protection of Integrated Circuit Layout Design, Regulations on the Collective Administration of Copyright, Regulations on the Administration of Audio and Video Products,

Regulations on the Protection of New Varieties of Plants¹, Regulations on the Customs Protection of Intellectual Property Rights, Regulations on the Administration of Special Symbols and Regulations on the Protection of Olympic Symbols, and of a series of related implementation details and judicial interpretation. To put into effect practical and effective judicial protection of IPR, shortly before and after its accession to the WTO in 2001, China made extensive amendments to IPR-related laws and regulations as well as judicial interpretation in order to give more weight to the promotion of advancement and innovation in science and technology in respect of the spirit of legislation, the contents of rights, the standards of protection and legal relief, and to make them align with TRIPS under the WTO and other international rules of IPR protection.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Signed on 15 April 1994, TRIPS is one of the agreements resulting from the GATT Uruguay Round negotiations, which led to the establishment of the WTO and the signing of a series of agreements and documents. Participants were required to sign all instead of some of the agreements and documents. Although the representative of China signed on these final agreements, China was not bound by these agreements at that time because it had not yet acceded to the WTO. On 10 December 2001, China formally became a member of the WTO and TRIPS came into effect simultaneously. TRIPS primarily provides that the nationals of other Members must be given national-treatment and most-favoured-nation treatment with regard to IPR protection. It also lays down stipulations on the standards concerning the availability, scope and use of IPR, related issues on enforcement, the acquisition and maintenance of IPR, the procedures of resolving disputes as well as the prevention and settlement of disputes.

In the course of putting IPR protection into practice, the mode of administrative protection running parallel with judicial protection has developed in China. At present, a number of administrative, law enforcement and judicial departments in the Mainland, such as the State Intellectual Property Office (SIPO), the State Administration for Industry and Commerce, the National Copyright Administration, the General Administration of Press and Publication, the Ministry of Culture, the Ministry of Agriculture, the State Forestry Administration, the Ministry of Public Security, the General Administration of Customs, the Supreme Court of the People's Republic of China and the Supreme People's Procuratorate, etc., perform the functions of IPR protection and they have worked effectively within their respective ambits over the past years. To step up efforts in IPR protection, China set up the

¹ For details of the protection of new varieties of plants, please refer to the section on "Hunan Introduces Plant Varieties Protection" in this report.

National Working Group for IPR Protection in 2004. Led by a Vice Premier, the Working Group is responsible for the coordination of the country's efforts in IPR protection.

According to statistics, from the enactment of the Patent Law in April 1985 to November 1999, the total number of patent applications concerning invention, utility mode and design handled by the SIPO exceeded one million. The number reached a new high of two million more than four years later in March 2004. As at the end of 2004, the number of patent applications handled by the SIPO added up to 2.285 million and over 1.255 million of patents had been granted.

IPR Executed - Large Proportion of National Total

The economic size of the Pan-PRD region, with a vast territory, accounts for one-third of the national total. In recent years, with the accession of China into the WTO, the Pan-PRD has made significant achievements in work related to IPR. At present, Patent, Trademark and Copyright Administration units have been established in the Pan-PRD region and most provinces/region have also set up provincial-level intellectual property work liaison and coordination agencies, greatly enhancing the coordinating efforts among relevant intellectual property departments. Various provinces/region have also promulgated local patent protection regulations, formulated subsidy¹ policies for patent applications and introduced a series of documents regulating intellectual property protection, supervision regulations and protection legislations² one after another, which are instrumental in enhancing the management of intellectual property as well as the regulatory and operational aspects of the protection efforts.

The management and protection of intellectual property rights throughout the Pan-PRD region has closely centred on the local economic and technological development and facilitated the rapid economic and technological development at local level. For example, the intellectual property protection work undertaken by Fujian Province has mainly centred on the construction of the Economic Zone³ on the West Coast of the Taiwan Strait; Sichuan Province has treated the patent work related to industrial park zones, high and new technology development zones and industrial clusters as the major target for the economic construction service; the intellectual property protection work undertaken by Guangdong

¹ For details on the subsidy for patent applications, please refer to the section "Jiangxi Encourages Invention Patent Application" found in this report.

² As local councils, the Pan-PRD region is not authorized to amend any legislation but it can seek to apply local rules or management requirements to perfect certain specific management methodologies via statutory procedures in order to facilitate the intellectual property protection work at local level.

³ The Economic Zone on the West Coast of the Taiwan Strait refers to the area of waters and land at the west coast of the Taiwan Strait from Wenzhou (温州), Zhejiang in the north to Shantou (汕頭), Guangdong in the south, with Fuzhou (福州) and Xiamen (廈門) as its core and south-eastern Fujian as its main body.

Province has mostly centred on the local niche industries such as electronic information, manufacturing as well as high and new technology, etc.

The progress on the administration related to intellectual property rights made by the Pan-PRD region in recent years is as follows:

1. Patent Grant

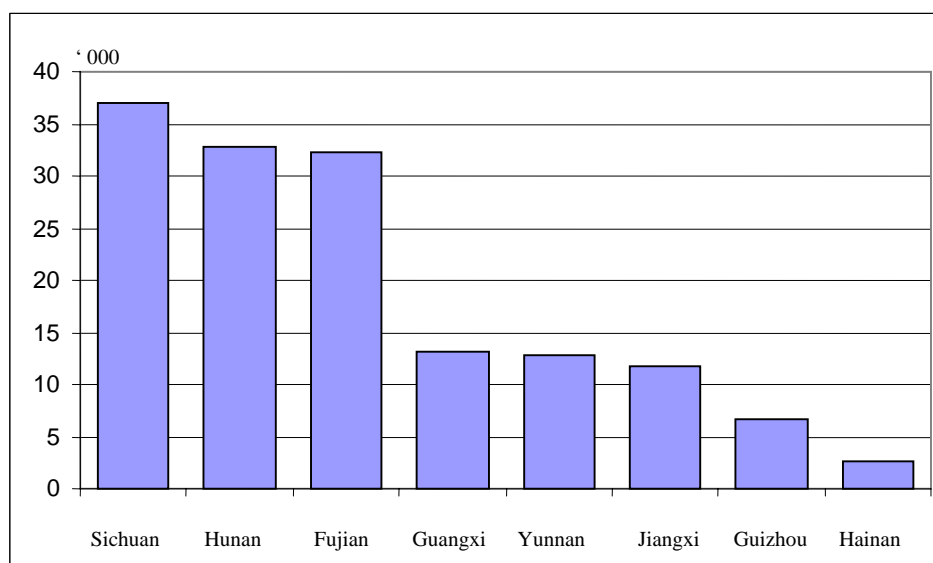
With growing capability in scientific innovation, the Pan-PRD region has shown significant progress in exercising patent rights. From the start of patents application in 1985 until the end of 2004, the State Intellectual Property Rights Office (SIPO) has granted 334 339 patents to the Pan-PRD region, including Hong Kong and Macao, accounting for 30.6% of the national total. In 2004, the whole region was granted 50 142 patents, accounting for 33.1% of the national total. Compared with 2003, the number of patents granted to the Pan-PRD region registered an increase of 4%, higher than the national average of 1.2%. The increase in patents granted for invention in particular was as high as 69.7%.

In 2004, the increase in patents granted to the Pan-PRD region was higher than those of Yangtze River Delta¹ and Bohai (渤海) Economic Rim². Among the three regions, the total number of patents granted to the Pan-PRD was also the highest. As one of the more developed provinces among the nine Pan-PRD provinces/region, Guangdong has been granted 172 554 patented items as at the end of 2004, the highest in Pan-PRD and accounted for 51.6% of the region's total. Among the remaining eight provinces/region, the four southeastern provinces/region, namely Hunan, Fujian, Jiangxi and Hainan, have been granted 79 476 patented items in the corresponding period, more than that of 69 601 patented items granted to the four southwestern provinces/region, namely Sichuan, Guangxi, Yunnan and Guizhou. Analysed by individual province/region, the number of patents granted to Sichuan being the highest, reached 36 966, accounting for 24.8% of the eight provinces/region' total.

¹ Yangtze River Delta comprises 16 cities, including Shanghai, Suzhou, Nantong, Wuxi, Changzhou, Taizhou, Zhenjiang, Yangzhou, Nanjing, Hangzhou, Huzhou, Jiaxing, Chaoxing, Ningbo, Zhoushan and Taizhou.

² Bohai Economic Rim comprises two major municipalities, namely Beijing and Tianjin, and five provinces/region including Liaoning, Hebei, Shanxi, Shandong and the central part of Inner Mongolia.

Total Accumulated Number of Patents Granted to the Eight Pan-PRD Provinces/region from 1985 to 2004



Source: State Intellectual Property Office.

In 2004, the Pan-PRD region applied 1 325 foreign patents under the Paris Convention for the Protection of Industrial Property (the Paris Convention) and the Patent Cooperation Treaty (PCT), an increase of 64.8% over a year earlier, accounting for 41.1% of the national total. Of which, 587 foreign patents were applied under the Paris Convention and 738 foreign patents were applied under the PCT. In 2004, the number of foreign patent applications made by the Pan-PRD provinces/region under the Paris Convention and PCT was higher than those of Yangtze River Delta and Bohai Economic Rim. This reflected the Pan-PRD region was in a more advantageous position to develop internationally recognised inventions and designs. The purpose of submitting applications for foreign patents under the Paris Convention and PCT is to simplify the relevant application procedures for inventors, thereby avoiding making duplicate patent grant for the same patent.

Paris Convention and Patent Cooperation Treaty

Paris Convention for the Protection of Industrial Property (Paris Convention) is an important international convention for the protection of intellectual property. It was signed in Paris on 20 March 1883 and takes effect from July 1884. By January 1992, 103 countries joined the Convention and China became its member on 19 March 1985. There are 30 Articles which apply to industrial property in the broadest sense and the protection of industrial property which has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin and the repression of unfair competition. In specific terms, the Convention reached consensus on national treatment, preferential treatment and universal regulations. The Convention

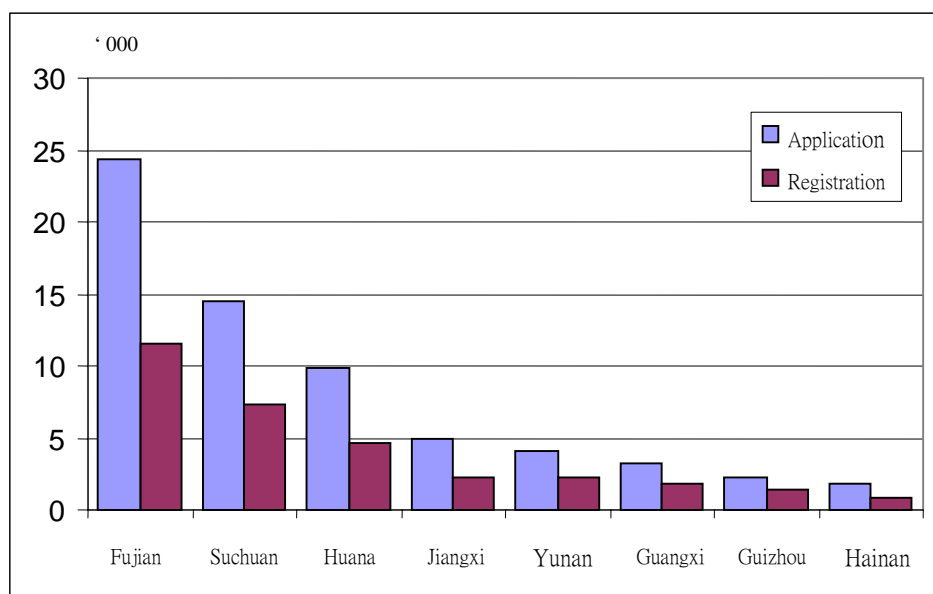
stipulates that nationals of any country of the Convention shall, as regards the protection of industrial property, enjoy in all the other countries of the Convention the advantages that their respective laws now grant, or may hereafter grant, to nationals. Nationals of countries outside the Convention who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Convention shall be treated in the same manner as nationals of the countries of the Convention.

Under the guiding principles of the Paris Convention, the Patent Cooperation Treaty was made. It is an international cooperation treaty in patent rights and is administered by the World Intellectual Property Organization. 35 countries signed the Treaty in Washington, DC on 19 June 1970, which takes effect from 24 January 1978. By February 1999, its contracting members stood at 98. China became a signatory on 1 January 1994. The Treaty is a multilateral treaty for the centralized processing of application, search, examination and publication of patent in relation to international procedures and standards. Its subject matter is to centralize patent application procedures and approval system of the contracting countries and to effect cooperation in international search and preliminary examination so that an invention can obtain recognition in several or all contracting countries designated by the applicant through one single international application for international patent, enforceable in the same manner as patents of the designated countries.

2. Trademark Registration

Great strides have been made in trademark protection in China since the resumption of centralized registration from 1 November 1979. The Trademark Law was enacted on 1 March 1983 followed by several amendments. Application for trademark registration in the Pan-PRD in recent years has increased drastically with continuous perfection of the Chinese trademark legislation and rising public recognition of trademarks. In 2003 alone, applications and registrations, including those in Hong Kong and Macao, soared to 150 392 and 75 563 respectively, i.e. 37.1% and 36.7% of the country's total, taking up more than a one-third share. This is further proof that Pan-PRD is the major driver of China's external trade and that the Pearl River Delta in Guangdong Province together with the south-eastern part of Fujian Province are establishing themselves as the processing-manufacturing bases for global enterprises. In 2003, trademark registrations in Guangdong and Fujian reached 50 324, accounting for one-third of Pan-PRD's total.

Trademark Applications and Registrations in Eight Pan-PDR Provinces/region



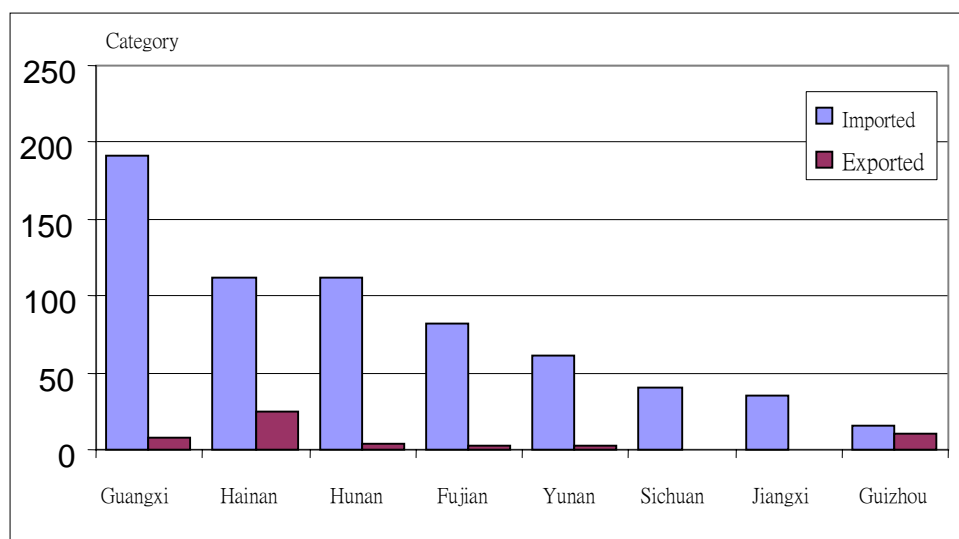
Source: State Administration for Industry and Commerce.

3. Copyright Trade

Development in copyright market is relatively notable. In 2004, in Pan-PRD, excluding Hong Kong and Macao, 1 097 imported categories of copyright and 64 exported categories of copyright were traded, accounting for 9.3% and 4.7 % of the respective national totals. These are relatively small shares compared to patent assignment and trademark registration figures but the share in specific areas such as entertainment and recreation industry, in particular audio and video products, is relatively big, reaching 56.6% and 30.5% of the country's total respectively¹. If the share of Hong Kong and Macao are included, Pan-PRD is definitely a major player in the national copyright market. It is recognized that Hong Kong's broadcasting, film and TV industry and entertainment industry are highly developed. Among the nine Pan-PRD provinces/region, the top-raters are Guangdong, Guangxi and Hunan. The most popular imported category is books, amounting to 724, being two-thirds of the district's imported total.

¹ Figures for Hong Kong and Macau not available

Copyright Imported and Exported for Eight Pan-PRD Provinces/region in 2004



Source: State Administration for Industry and Commerce

The above figures showed that the use of IPR in Pan-PRD is on a steady rise annually and its share is relatively big compared to the national total. This suggests great potential in intellectual property intermediary services ¹market in Pan-PDR and offers a valuable opportunity which Hong Kong's intellectual property agencies can exploit to enter the Mainland market. Equipped with a deep understanding of the common law system and the overseas intellectual property protection regime, Hong Kong agencies can expand their Mainland business by teaming up with their counterparts in the nine provinces/region as partners or opening their own offices/representative offices direct. According to the provisions of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), the Mainland allows Hong Kong service providers to take part in patent agency services after registration with administration authorities for industry and commerce at the provincial level and obtaining the qualification of statutory operating entity. This is an opportunity that Hong Kong's intellectual property agency service providers should take note of.

¹ Intermediary services include intellectual property agency services, property appraisal, combating counterfeits and taking evidence infringement investigation, information services and prosecution agency services.

Addressing Infringement of Intellectual Property Rights in the Mainland

Although the Pan-PRD has made significant achievements and has been playing an influential role in IPR protection in the Mainland in recent years, infringement of IPR is still commonplace as the Mainland IPR system is relatively new and the society's respect for IPR is comparatively weak. Besides, the imbalance in the development of regional economies and markets has led to great differences in the execution and standards of IPR laws. To boost the development of their economies and sustain employment, some local governments have tolerated and harboured infringement of IPR, aggravating the inadequacy in IPR protection in the region with more infringements of IPR and manufacturing and sale of counterfeits coming into light, and collective, repetitive and cross-regional cases emerging. A number of foreign-related IPR cases coming with potentially great impact like the "Cisco vs Huawei" case and the Mainland "Netac vs Huaqi" case all took place in the Pan-PRD region and aroused local or even global concern.

“Cisco (思科) vs Huawei (華為)” and “Netac (朗科) vs Huaqi (華旗)”

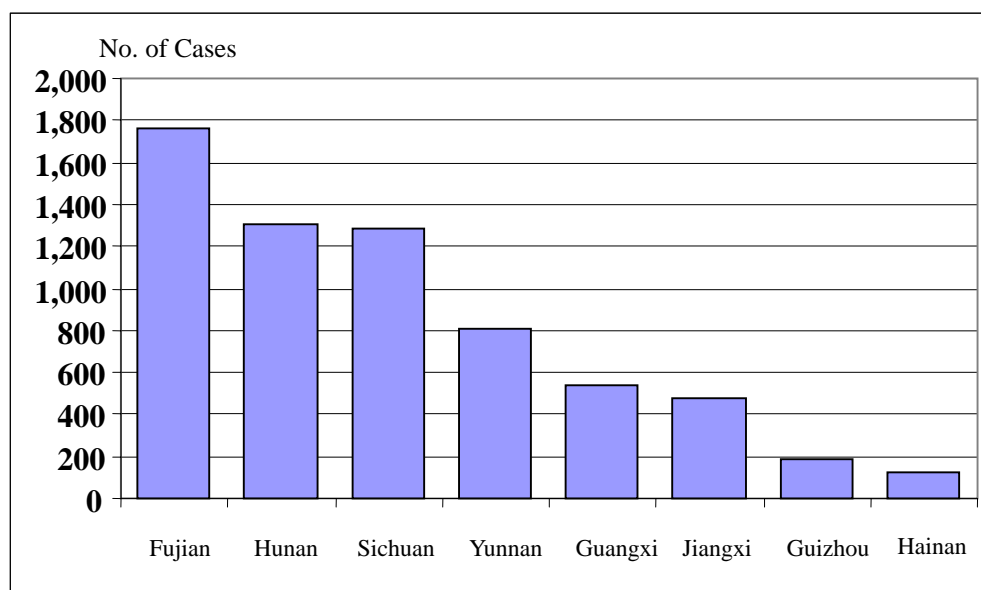
On 23 January 2003, Cisco Systems Co. Ltd., a world leading supplier of Internet equipment, brought an action in the US court accusing Shenzhen's Huawei Technologies Co. Ltd., which engages in telecom network technologies and research and development, production, sales and marketing of telecom equipment, of infringing a number of IPR, including the piracy of software source code and technical information etc. Cisco also requested the US district court to ban the sale of some of Huawei's products and claimed damages. Running a strong defence, Huawei denied the accusation. Both parties could not break out of a stalemate for a very long time which had attracted media attention. It was not until 30 July 2004 that the US district court closed the "Cisco vs Huawei" case upon application by the parties.

In September 2002, Shenzhen's Netac Technology Co. Ltd., a key mobile storage manufacturer in the Mainland, filed a lawsuit against its competitor, Beijing's Huaqi Information & Digital Technology Co. Ltd. for infringement of its invention patent of flash memory disc. But Huaqi insisted that the technologies of flash memory disc are known to public and there is no patent. Causing a sensation, the case was regarded as the first IPR case in the IT circle of the Mainland. At the first trial on 11 June 2004, Shenzhen Intermediate People's Court ruled that Huaqi shall cease to manufacture and sell "aigo Mini King" flash memory discs, including the MP3 flash memory disc products, with immediate effect and pay RMB 1 million to Netac as infringement damages.

IPR Infringement More Serious

Statistics revealed that in 2003 alone, the Pan-PRD Industry and Commerce Administration units at different levels investigated a total of 11 571 cases relating to trademark infringement, accounting for 30.9% of the national total. Of this, 3 331 cases involved general infringement of trademarks, 8 240 cases involved infringement and counterfeiting of trademarks (with 744 cases of infringement and counterfeiting of foreign-related trademarks), seizure and removal of 17.94 million pieces (sets) of counterfeit trademarks and labels and 11 people involved in 7 cases handed over to the judicial authorities for investigation of criminal liability. Out of the nine provinces/region, cases involving counterfeiting of trademarks occurred mainly in the country's manufacturing processing bases of Guangdong and Fujian, where 3 506 cases of this kind were investigated in 2003, accounting for 42.5% of the nine provinces/region's total and involving a total fine of RMB 30.04 million.

Number of Counterfeit Trademarks Cases Investigated in the Eight Pan-PRD Provinces/region in 2003

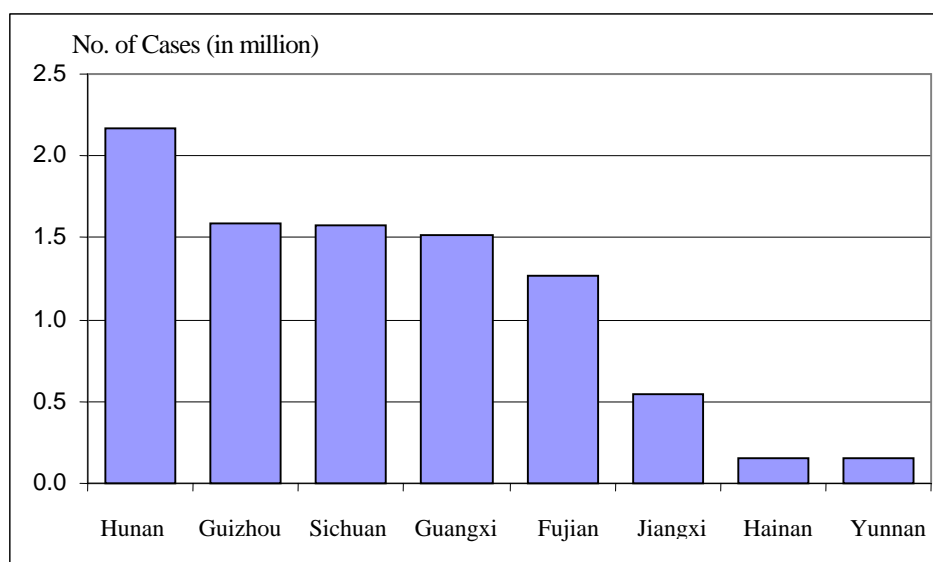


Source: State Administration for Industry and Commerce

Infringement of copyright is also relatively serious among the nine provinces/region. Statistics showed that in 2004, the Pan-PRD Copyright Administration units at different levels processed a total of 2 432 cases of copyright infringement, amongst which 2 304 cases were subject to penalty. A total of 33.43 million pirated items were seized throughout the year, including some 5.55 million pirated books, 0.2 million pirated journals, 20.56 million pirated audio and video products, 5.8 million pirated electronic publications, 1.1 million boxes of pirated software and 0.2 million pirated items of various kinds. Guangdong, Hunan and Guizhou were the top three provinces that have a larger

number of pirated items seized, among which Guangdong's situation is comparatively critical with its illegal duplication and sale of electronic publications and smuggling of pirated audio and video products. Ranking first in the whole nation, Guangdong seized pirated electronic publications and audio and video products that accounted for 87.1% and 78.4% respectively of the totals of the nine provinces/region.

Number of Pirated Items Seized in the Eight Pan-PRD Provinces/region in 2004



Source: National Copyright Administration

IPR Infringement Faced By Hong Kong Enterprises Rather Serious

With further implementation of CEPA, more Hong Kong businesses and cultural workers are entering the Mainland market to invest in factories, start business, engage in cultural publications and arts exchanges. At the same time, the number of cases involving infringement of trademark, copyright and patent is rising.

The following are some typical cases in which IPR of Hong Kong enterprises have been infringed:

1. Trademark infringement

Given the enormous potential of the Mainland market, many Hong Kong enterprises have been lured to market their products in the Mainland in recent years. Upon entering the Mainland market, they often adopt a brand development strategy and display the Hong Kong brand on their products. With more and more Hong Kong branded products in the Mainland market, infringement of trademark and design has become rampant. During

mid-Autumn Festival in 1999, the Taipan Bread and Cakes Co. Ltd (香港大班公司) (Taipan Ltd) in Hong Kong discovered that a kind of snowy moon cake put on sale by Shanghai Taipan Company as “Taipan Snowy Moon Cake” with its packaging very similar to that used by Taipan Ltd in Hong Kong. It then took the case to court. In August 2001, the Guangdong Apples Industrial Co. Ltd (蘋果實業有限公司) was alleged of infringing the apple-shaped trademark of the Texwood Ltd (德士活有限公司) in Hong Kong. In April 2005, the Nin Jiom Medicine Manufactory (Hong Kong) Limited (京都念慈菴總廠有限公司) filed a lawsuit against Runda Medicine Manufactory Limited (潤達製藥有限公司) in Guangxi on the ground that the packaging design of the product “Kebiqing Pei Pa Koa” (克必青橘紅枇杷膏) manufactured by the latter resembled that of the product “Nin Jiom Herbal Cough Syrup, Pei Pa Koa” (京都念慈菴蜜煉川貝枇杷膏) which had patent and trademark registration. This constituted an infringement of the registered trademark of the company and brought about unfair competition. In the above cases, the court ruled that the defendants should stop the infringement and compensate the plaintiffs for the financial losses.

As Hong Kong enterprises move to start up factories in the Mainland, disputes over the interests and rights of trademark are expected to arise. In 1979, the Guangdong Light Industrial Products Import and Export Corporation (GLIP) reached an agreement with the Tong Ming Enterprise (TME) in Hong Kong that TME should provide the “TMT” trademark and GLIP manufacture and export ceiling fans. At that time, GLIP registered the trademark “TMT” with the Trademark Office while TME set up the TMT Company in Hong Kong. Later a dispute arose between the two companies over the ownership rights of the “TMT” trademark, the TMT Company in Hong Kong filed a lawsuit in court in 1997 against GLIP. It was claimed that GLIP had breached the entrustment agreement between the two companies with the intention of stealing the trademark that the TMT Company had entrusted GLIP to register in the Mainland. The TMT Company asked the court to rule that GLIP should return the trademark to it and compensate it for the loss of RMB 0.1 billion. Other cases in point includes a lawsuit over trademark infringement brought by Sendon Co. Ltd in Hong Kong against Huada Electronic Company in Shenzhen of unauthorised use of the trademark “SENDON” owned by the plaintiff in manufacturing its products.

2. Copyright infringement

Copyright infringement may be in many forms, such as unauthorised duplication, distribution and sale in the case of audio and video products. According to the statistics of the General Administration of Customs, there are currently over 300 pirated optical disc production lines in the Mainland. It is common for an unlawful business to rent residential premises of around 200 square metres in some remote areas between two provinces or at suburban areas and operate underground factories to print pirated optical discs for distribution via underground channels for sale to various parts of the country. It is known that many audio and video shops and supermarkets in the Mainland are selling pirated optical discs. It is not easy to distinguish between authentic and pirated versions. According to the estimates

of the Motion Picture Association (MPA) of the United States, 95 out of 100 movie optical discs currently sold in the Mainland are pirated. In some cases, pirated optical discs of a movie were even put on the market earlier than the premiere of the original. In November 2002, Mainland audience could buy the video discs of the new movie “The Lion Roars” produced by China Star Entertainment Ltd five days before it was shown in Hong Kong.

With the advance in technology, illegal downloading from the Internet has become common. In July 2003, the Universal Music Hong Kong Ltd. filed a writ against the Nuoya Technology Development Co. Ltd in Hefei on the ground that the defendant infringed the right of audio recording of the plaintiff by allowing the public to download from its website 19 songs by the latter’s singer, Cecilia Cheung. The plaintiff demanded the defendant to stop the infringement immediately and issue an apology statement on its homepage and a newspaper with nationwide circulation. It also claimed damages of RMB 0.43 million from the defendant. In January 2004, Go East Entertainment Co. Ltd (Go East) in Hong Kong filed a lawsuit against CHINAMP3 operated by the Shijiyuebo Technology Co Ltd. in Beijing on the ground that the defendant infringed the legal rights of the plaintiff by allowing the public to download 35 songs by Kelly Chan and 11 songs by Candy Lo, both were Go East’s singers. It demanded the court to rule that the defendant stop the infringement immediately and compensate the plaintiff for the financial losses and reasonable legal costs totaling RMB 0.75 million.

On top of illegal duplication, sales of pirated compact discs and illegal download, unauthorised playing of videos in commercial establishments is also common in the Mainland. In November 2003, “Warner Music Hong Kong Limited” sued “Tangrenjie (唐人街) Food and Beverage Entertainment Company Limited” in Beijing for unauthorised playing of their copyrighted MTVs in public in the form of Karaoke. The court ruled that the defendant had to pay the plaintiff RMB 23,000 as compensation for their economic loss, and another sum of RMB 15,000 to recover the litigation cost. In 2004, “Kubulong (酷比龍) Culture and Entertainment Company Limited”, “Hongjiazhou (紅加州) Holdings Company Limited” and “Jiazhouhong (加州紅) Culture and Art Holdings Company Limited” were sued by three copyright holders, namely “Warner Music Hong Kong Limited”, “Sony Music Hong Kong Limited” and “Universal Music Hong Kong Limited” for violating their copyright through unauthorised playing their copyrighted MTVs in public in the form of Karaoke. The court ruled that the trio was required to cease their acts of violation in their establishments and compensate the copyright holders for their economic loss of RMB 10,000 flat for each MTV work.

3. Patent Counterfeiting

The case in which “Meiyi Metal Products Factory” (Meiyi Factory) in Hong Kong sued the China Patent Office is representative among the counterfeiting cases involving infringement of patent rights. On 1 April 1985, Meiyi Factory applied to the China Patent

Office for an invention patent of its product — the “Inert Clamp Type Door”. After substantive examination, the China Patent Office considered the product to be in conformity with the conditions of novelty, creativeness and utility as stipulated in the Chinese Patent Law, and hence granted Meiyi Factory the invention patent on 23 June 1988. Between May 1989 and March 1990, “Panyu County Pulling Brake Factory”, “Hongxing Rolling Brake Factory” and “Nanfang Pulling Brake Factory” in Guangzhou City, Guangdong Province requested the Patent Re-examination Committee respectively to declare the patent of “Inert Clamp Type Door” granted to Meiyi Factory invalid on the ground that the invention was neither novel nor creative. After examination, the Patent Re-examination Committee declared on 31 December 1990 that the invention patent was invalid on the ground that the invention was not creative. Meiyi Factory then appealed to the Beijing City Intermediate People’s Court against the decision of the Committee. The appeal was finally remitted to the Beijing City High People’s Court. Both courts concluded that the decision made by the Patent Re-examination Committee was unsubstantiated and the Committee’s unsubstantiated decision should be withdrawn according to the Chinese Patent Law.

Besides, there are fraud cases involving Mainland enterprises which cheated other parties into the belief that they had formed partnership with some Hong Kong enterprises. These victims who were deceived into signing the purchase and sale contracts suffered great financial losses. In May 1999, two businessmen, Lai and Lu from Xinyi City (信宜市), Guangdong Province entered into partnership with “Hop Shing Development Company” in Hong Kong for exporting “awn handicraft” products. While “Hop Shing Development Company” contacted the overseas buyer and obtained the letter of credit for the purchase, Lai and Lu contacted the suppliers in the Mainland for the products. With knowledge of marketing and distribution flows, Lai and Lu cozened “Fuyou Craft Factory” in Guangxi under the name of “Hop Shing Development Company”, into signing a contract with them for selling them the awn handicraft products worth over RMB one million for sale to Shenzhen and Hong Kong. The two men refused to settle the payment demanded by “Fuyou Craft Factory” under the pretext that they had not received payment from their buyers. The duo was finally arrested by the police and charged with fraud.

The above examples indicate that illegal activities involving violations of IPR are rampant in the Mainland and sometimes spread to Hong Kong. To safeguard the IPR of Hong Kong enterprises in the Mainland, Hong Kong businesses should promptly register their trademarks and patents when entering the Pan-PRD market. Hong Kong and the eight Pan-PRD provinces/region should also make reference to the successful experience of the Guangdong/Hong Kong Expert Group on the Protection of Intellectual Property Rights¹ and establish a network for coordination and communication, to counter cross-border violations

¹ The Guangdong/Hong Kong Expert Group on the Protection of Intellectual Property Rights was set up in line with the objectives of the sixth Hong Kong Guangdong Cooperation Joint Conference held in December 2003 with a view to strengthening exchanges and cooperation on IPR issues between Hong Kong and the Mainland.

of IPR through conducting regular meetings, exchanging intelligence, and undertaking joint actions. According to statistics, during 2003, the customs offices of Guangdong and Hong Kong exchanged intelligence on 79 occasions, conducted three joint operations to safeguard IPR, detected 24 cases of cross-border violations of IPR, followed up investigation about the IPR of 126 compact discs processing mandates and copyright authorisation which led to the seizure of a huge amount of suspected pirated compact discs. All these actions have basically helped curb large scale smuggling activities of pirated discs.

Fujian: Impressive Progress In Enhancing Judiciary Protection of Intellectual Property Rights

In recent years, Fujian province has stepped up its judicial efforts to protect IPR by taking to court various kinds of IPR cases, combating acts of infringement, upholding fair competition in the market economy order and positively protecting the lawful interests of IPR holders. These provide strong judiciary protection that serves as a catalyst for commercial application of scientific findings and innovative initiatives, thereby enhancing the overall competitiveness of the province. In 2004, Fujian adopted positive measures to strengthen the judiciary institutions and their powers for hearing IPR cases. Pursuant to the requirements proclaimed by the Supreme Court of the People's Republic of China², the first trials of all civil IPR cases in the province are conducted in Intermediate Courts or higher level courts³ starting from the year 2004. Primary courts no longer accept or hear IPR cases. In March 2004, the legal regime for IPR cases in the province was made complete upon the opening of Third Civil Division in the Quanzhou Intermediate Court. The six Intermediate Courts of Fuzhou, Xiamen, Zhangzhou (漳州), Quanzhou (泉州), Putian (莆田) and Ningde (寧德) each creates a special unit, a Third Civil Division to handle IPR cases, while the three Intermediate Courts of Longyan (龍岩), Nanping (南平) and Sanming (三明) have put in place in their First Civil Division or Second Civil Division⁴ a collegiate bench⁵ for IPR cases. Furthermore, many of the Intermediate Courts have selected and deployed a batch of higher-calibre judges to the trial divisions dealing with IPR cases.

China's Judicial Protection System for IPR

IPR judicial protection in China is composed of three main components namely civil, administrative and criminal judicial protection. Of these, civil judicial protection constitutes the basis of the entire system. In October 1996, the Supreme Court set up a specialized IPR court. Before 2000, 14 high courts, 30 intermediate courts and 4 primary courts had set up IPR courts. The institutional reforms in court since 2000 helps to fortify and boost the growth of the specialised IPR courts. In October 2000, the Supreme Court

² To ensure quality and efficiency of trials, the Supreme Court of the People's Republic of China has been placing common IPR cases under a relatively centralised jurisdiction since 2000 by requiring that the first trials of IPR cases be generally dealt with and conducted in Intermediate Courts or higher level courts. In 2004, the first trials of 91% of the IPR cases of the country were conducted in Intermediate Courts or higher level courts.

³ The courts in the Mainland are divided into four levels: the Supreme Court of the People's Republic of China, high people's courts in provinces, intermediate people's courts in municipalities, and primary people's courts.

⁴ In accordance with the organisation structure of the Judiciary in the Mainland, First Civil Division mainly hears matrimonial, family and employment dispute cases whereas Second Civil Division mainly hears cases involving stocks, companies and bankruptcies.

⁵ A collegiate bench consists of three or more judges, or a judge with the jury, who together hear a case and return a verdict.

formally set up the Third Civil Division, which is an independent court specialized IPR in the trial of cases. At present, Third Civil Division can be found in nearly all high courts and intermediate courts in all provincial capital cities, as well as in many other intermediate courts and certain primary courts designated by high courts. IPR cases are generally heard by specialized collegiate bench where the Third Civil Division has yet to set up.

A Batch of Cases Timely and Fairly Concluded

In 2004, the courts in Fujian province accepted and heard a total of 396 civil IPR cases in first and second trials and concluded the hearing of 368 cases, including 94 copyright cases, 145 patent cases, 54 trademark cases, 11 technical contract cases and 64 improper competition and other cases. In the year, 324 new IPR cases were accepted by the courts of the province, representing a record high increase of 63.9% over 2003. The following four aspects were observed in the IPR cases put to trial in the courts of Fujian in 2004:

1. Upsurge in New Types of Cases

In the dispute over the registered trademark “Anjing” owned by Xiamen Huashun Minsheng Food Company Limited (廈門華順民生公司) and the firm name “Anjing (安井)” adopted by Xiamen Anjing Industrial Company Limited (廈門安井實業公司), the High Court of the province in the concluding trial held that the principles of prior right, honesty and honour should be observed and therefore, the defendant Xiamen Anjing Industrial Company Limited shall cease using “Anjing” as the name of any such frozen food factories which are the same as or similar to those owned by the plaintiff. Apart from that, Xiamen Intermediate Court has heard a case of contesting the arbitration resolution by the World Intellectual Property Organisation to terminate an internationalized domain name; the Fuzhou Intermediate Court has heard a case involving a dispute over the name of a new plant species; the Ningde (寧德) Intermediate Court has heard a case involving a dispute over counterfeit commodity barcodes; and the Putian (莆田) Intermediate Court has heard a case involving a dispute over a trademark carrying the place name “Xitianwei (西天尾)”. They are new and different from cases the courts of Fujian Province have accepted and heard.

2. Most cases settled by reconciled withdrawal

In 2004, Fuzhou Intermediate Court recorded a rate of 82.5% for reconciled withdrawal, and Xiamen Intermediate Court, 56%. In dealing with a dispute in which “Xiamen Huaqiao Electronic Enterprise” (廈門華僑電子企業) sued “Sichuan Zhanghong Electronic Consortium” (四川長虹電子集團) for infringement of its registered trademark “CHDTV”, the provincial High Court and Xiamen Intermediate Court arranged time and

again for research to be done, pushed for mediation, and finally convinced the plaintiff to settle the case by withdrawal. In another case filed against “Xiamen Tobacco Factory” by a Professor Wang of Fuzhou University who claimed that his copyright was infringed by the company’s tobacco trademark “Shishi” (石獅), the provincial High Court mobilized efforts from various sources to conduct mediation during the second trial. Consequently, a settlement agreement was reached whereby the copyright holder showed understanding and so “Xiamen Tobacco Factory” can continue to use the “Shishi” tobacco trademark. The settlement of these cases, either by mediation or by withdrawal after an out-of-court resolution by the parties involved through mediation, is agreeable to the parties and perceived as socially beneficial.

3. Pre-trial provisional measures are actively invoked

The provision for the People’s Court to take pre-trial provisional measures on cases of intellectual property rights subject to certain conditions upon the application of the party concerned are an addition to the Intellectual Property Law in the Mainland. In respect of the cases of intellectual property rights trials in Fujian in 2004, the provincial courts invoked, in full compliance with the laws, a range of pre-trial provisional measures, including pre-trial injunction, pre-trial or during-the-trial preservation of property and evidence, pre-judgement enforcement, etc. Such measures timely stopped infringement acts and effectively prevented any further losses of the IP right holders. It was reported that in 2004, the Third Civil Division of Fuzhou Intermediate Court implemented the measure of preservation of evidence for 82 cases, and issued provisional injunction or ordered advance enforcement for another 22. The administration in Fuzhou Intermediate Court shows these measures are quite effective as most cases imposed with a provisional injunction were resolved by mediation.

Provisional Injunction, Preservation of Property, Preservation of Evidence and Advance Enforcement

Provisional Injunction - When a party finds out that his rights are being or will be infringed, he can apply to the court to grant an order requiring the other party (or parties) to stop the infringement act before instituting proceedings. This serves to curtail the infringement act timely, prevent any infringement from occurring or contain the scope of the infringement.

Preservation of Property - A party can apply to the People’s Court as a matter of urgency to for preservation of property before or during the proceedings in case irreparable harm may be caused to his legal rights if an application is not immediately made.

Preservation of Evidence - Under the circumstances where evidence may be lost or difficult to obtain afterwards, a party can apply to the court for collecting or preserving the evidence

for retention purpose after instituting proceedings but before court inquiry commences.

Advance Enforcement - To support daily needs, a party can request the court to order the other party to pay a certain amount of money to the applicant or to immediately perform or stop an act before a judgement is handed down.

Create Public Involvement Environment For Judiciary Protection Of Intellectual Property

In 2004, a batch of landmark cases was tried in Fujian. For example, the Xiahua vs Changhong trademark infringement dispute heard by the High Court of Fujian Province and Xiamen Intermediate Court was at the same time heard in the courts of Shanghai, Guangzhou and Beijing. Being the first case in China's jurisdiction involving the same facts being heard in the courts of four different places, it aroused the concern of the deputies of the National People's Congress and required the coordination of the Supreme Court. It has given rise to considerable nation-wide impact. The action by a Professor Wang of Fuzhou University against Xiamen Tobacco Factory over the Shishi cigarette trademark copyright infringement, and the action by the Fujian Qipilang Group (福建七匹狼集團公司) against Longyan Qipilang Colour Printing Group (龍岩七匹狼彩印公司) over improper competition and trademark infringement were also controversial cases with great social impact.

Noting that these cases have great social impact and attract the attention of the media and the public, the courts in Fujian Province actively made use of the publicity surrounding these cases to create a public involvement environment for judiciary protection of intellectual property, build up impartial image and authority for the courts and enhance the awareness of intellectual property protection and related legal concepts in the community. According to statistics, the courts in Fujian Province provided details of 30 cases and issued 8 news articles of the media in 2004. Besides, to mark the fourth "World Intellectual Property Day" on 26 April 2004, the courts in Fujian Province held a series of activities to promote the system of judiciary protection of intellectual property. In addition, the Court of Fujian Province compiled a book entitled "*An Analysis of Notable Intellectual Property Cases*" which outlined the progress in the development of specialized judicial institutions for handling intellectual property cases in the last decade. The Court also worked hand-in-hand with the news media including Fujian Provincial TV Station and Fujian Daily by supplying them with materials for feature coverage on landmark cases concluded by the Court of Fujian Province. Great publicity was generated.

World Intellectual Property Day

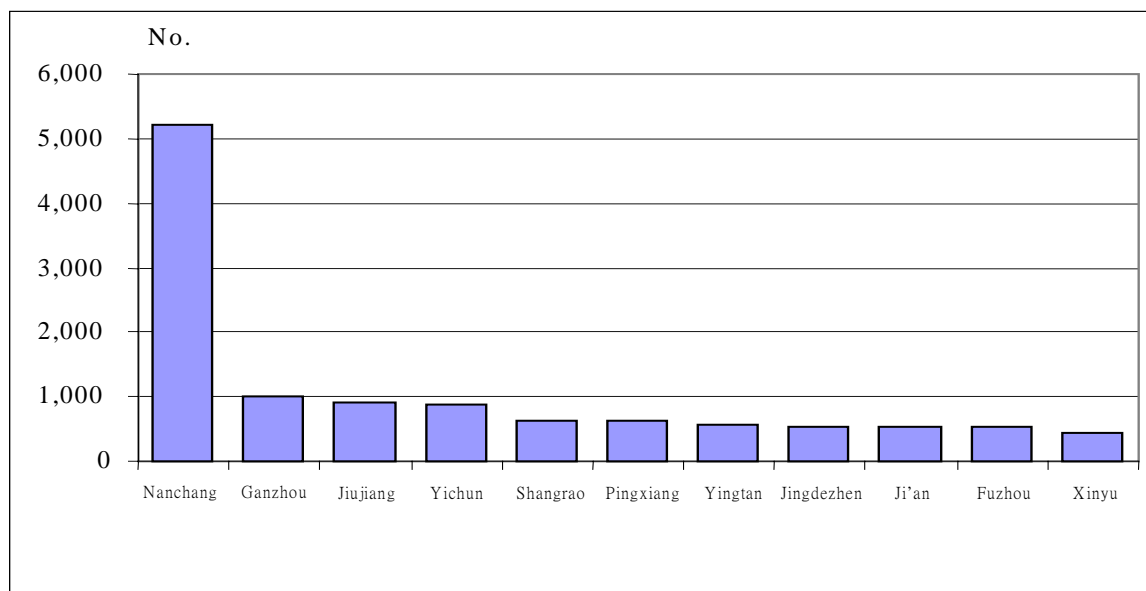
The “World Intellectual Property Day” was jointly proposed by China and Algeria in 1999 at the 34th plenary session of the World Intellectual Property Organization (WIPO) and was generally welcome by the member states. WIPO adopted the proposal at its 35th plenary session in 2000 and designate 26 April the World Intellectual Property Day. On 26 April 2001, the first ever World Intellectual Property Day was celebrated. The purposes of establishing the World Intellectual Property Day and launching related activities are to promote respect for knowledge, esteem for science and awareness for protection of intellectual property right worldwide; and to foster legal environment conducive to knowledge innovation and protection of intellectual property rights.

Despite strong market potential in the Mainland, violation of intellectual property rights by Mainland enterprises poses quite a serious problem at the present stage. Legal protection for intellectual property needs to be strengthened before technological achievements can be effectively launched in the commercial market and translated into economic gains. For those Hong Kong enterprises intending to tap into the Mainland market, the intensified legal protection for intellectual properties by Fujian authorities in recent years is a noteworthy development of great significance.

Jiangxi Encourages Invention Patent Application

In recent years, Jiangxi has made considerable progress in patent administration. Before 2002, the patent administration regime of the province was composed of the Provincial Patent Administrative Authority and two intellectual property offices in the prefecture-level cities of Nanchang (南昌) and Ganzhou (赣州) only, supported by no more than 30 staff. Such an establishment can hardly meet the growing demand after China's accession into WTO. To rectify the situation, the Jiangxi authorities have drawn up and rolled out focused plans to enlist the support of the party committees and governments of various prefecture-level cities. Efforts for more than a year have achieved encouraging results. At present, intellectual property offices staffed with government officials and personnel have already been established in all of the 11 prefecture-level cities in the province, and more will be set up at county (district) level in stages. When the process is completed, it is envisaged that a coordinated patent administration hierarchy spanning the provincial, municipal and county (district) levels will be put in place. In 2004, Jiangxi registered a total of 2 685 patent applications and 1 169 patent grants, up 51% and 17% over 2001 respectively. As at end March 2003, Nanchang, Ganzhou and Jiujiang (九江) took up the largest shares of patent grants among the 11 prefecture-level cities, accounting for 43.9%, 8.5% and 7.7% of the provincial total respectively.

Total Number of Patent Grants of the Prefecture-level Cities in Jiangxi from 1985 to 2003^a



^a From 1 April 1985 to 31 March 2003
Source: Jiangxi Provincial Patent Administrative Authority

First-ever “Patent Application and Dedicated Implementation Fund” Launched

Whether patented technologies can be put into practical use and in turn translated

into productivity depends not only on the effectiveness of patent administration, but also on the prevailing economic development needs. In order to give impetus to the technological advancement of the Jiangxi Province, encourage patent applications for new inventions, expedite technological innovations, provide support to new and hi-tech products with exclusive intellectual rights and good market potential, as well as promote economic development, the Jiangxi Province first set up in June 2002 its “Patent Application and Dedicated Implementation Fund” and enacted the “Provisional Rules Governing the Subsidy for Patent Application and Implementation in the Jiangxi Province”. The subsidy is divided into two parts, one for patent application and the another for patent implementation.

1. Subsidy for patent application

As an incentive, subsidy for patent application is set up to serve as guiding fund to motivate entities and individuals to drive toward invention-creation by subsidising their patent application fees. The patent application subsidy in Jiangxi is made available mainly to pay up part of their application fees for invention patent (including service invention-creation and non-service invention-creation) and utility model patent (excluding non-service utility model patent). All business entities, public bodies, groups and individuals under the jurisdiction of Jiangxi Province are eligible for the subsidy. And to receive the subsidy, patent applications must be novel, inventive, of practical applicability and in alignment with the direction of the province’s industrial development as stipulated in the Patent Law.

Service Invention and Non-service Invention

According to the Patent Law, a service invention refers to an invention-creation made by a person by using the material of the entity to which he belongs, including any invention-creation made by a person in the course of performing his own duties; or in execution of any task, other than his own duties, entrusted to him by the entity to which he belongs; or within one year from his resignation, retirement or change of work, where the invention-creation relates to his own duties or the other tasks entrusted to him by the entity to which he previously belonged. A non-service invention refers to an invention-creation made by an individual outside the above circumstances. A comparison of China and overseas countries on the proportion of applications for patent for service-invention to that for non-service invention shows that applications for patent abroad mostly relate to service-invention, while most applications for patent in China relate to non-service invention. Such phenomenon reflects that the policy on enhancing knowledge production and patented invention has to be taken forward and promoted more vigorously.

According to the Provisional Regulations, subsidy for patent application for

invention or utility model in China is set at a level equivalent to 60% – 80% of the application fees and examination fees and 50% of the fees for appointing a patent agency to act as agent. Subsidy to the tune of \$10,000 – \$20,000 will be paid to applications for overseas invention patent. Nevertheless, double subsidy for the same patent item is not allowed.

Patent Application Fees and Examination Fees

According to the Patent Law and the Implementing Regulations of the Patent Law, patent applicants are required to pay fees to the State Intellectual Property Office and perform the relevant formalities. According to the “Circular of the State Development Planning Commission and the Ministry of Finance on the Adjustment of Patent Fees Scale” issued by the State Development Planning Commission and the Ministry of Finance on 29 December 2000, patent application fees and examination fees (applicable in China) are set as follows:

Fees	Amount (RMB)
1. Application fees:	
i. Patent for invention	900
ii. Patent for utility model	500
iii. Patent for external design	500
2. Annual fees for maintenance of application for invention patent	300
3. Fees for examination of application for invention patent	2,500

2. Patent Exploitation Fund

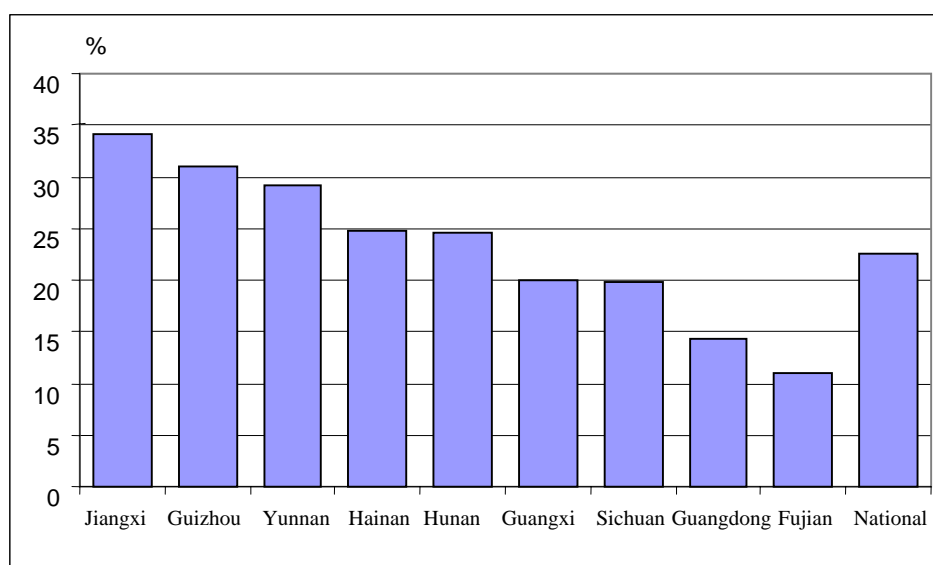
The Patent Exploitation Fund (PEF) provides subsidy primarily to facilitate the application of effective patented technologies with sound development potential and good market prospect, that are in line with the intellectual property policies of Jiangxi. Preference will be given to national patented projects with exemplary values; state or provincial entrepreneurial pilot projects for patent exploitation; as well as projects with patent awards granted at provincial or higher level. Registered entities with a fixed office place within the jurisdictions of Jiangxi are eligible for the PEF. The Provisional Regulations stipulate that a panel of experts formed by the Provincial Patent Bureau (the Bureau) will be responsible for assessing projects applying for the PEF, having regard to the technology level of patent exploitation, market prospect and scale of patent development. Projects that best meet these criteria will be awarded the PEF. The Bureau will then draw up a funding plan to determine the level of subsidy to be made on the basis of the advice of the panel before submitting it to

the Provincial Science and Technology Department for endorsement.

Patent Applications Regime Improved

Since the introduction of the subsidy to patent applications and exploitation, Jiangxi witnessed a rather substantial increase in patent applications in the past two years. Following the unprecedented rise in the number of patent applications (more than 2 000) in 2002, a huge upsurge with a year-on-year increase of 19.5% was recorded in 2003. Patent applications featuring higher level of technology and innovative capacity are more likely to be funded, resulting in higher content quality in the province's patent applications. In 2003, Jiangxi registered a total of 832 patent applications, accounting for 34.2% of the total annual patent applications in the Mainland, even higher than the national average of 22.6%; and ranking first among the nine Pan-Pearl River Delta Region provinces. This demonstrates that Jiangxi has a relatively stronger innovative capacity and enjoys a technology advantage in nationwide competition.

Percentage* of Invention Patent Applications of the Nine Pan-PDR Provinces/region in 2003



* As a percentage of the total patent applications
Source: State Intellectual Property Office

With the scaling up of patent applications both in terms of quantity and quality in recent years, Jiangxi's demand for the service provided by quality patent agents is expected to go up further. At present there are only seven patent agencies in Jiangxi Province. For years, the agency service has been provided by only a handful of patent agents. This, coupled with the staff wastage in these agencies, has left much to be desired in both the service quality of these agencies and their staff's performance and commitment. In this connection, doors have been opened for Hong Kong's professional agents who are familiar

with the operation of the international market and the common law legal system, and have a better command of the English language. Under CEPA, eligible Hong Kong permanent residents with Chinese citizenship are allowed to take the National Qualification Examination for Patent Agents in the Mainland with effect from 1 January 2005. Those who have passed the examination will be issued with a Patent Agent Qualification Certificate and may then practise in patent agencies that have been permitted to be established in the Mainland. Those who meet the prescribed requirements may become partners or shareholders of patent agencies that have been permitted to be established in the Mainland.

Hunan Introduces Plant Varieties Protection

Protection of new varieties of plants is an important aspect of intellectual property protection. The implementation of the Regulations on the Protection of New Varieties of Plants in China on 1 October 1997 has greatly enhanced the awareness of intellectual property protection among agricultural technologists. That has also been an incentive for them to develop high and new technologies. As at 31 July 2005, the Ministry of Agriculture (MoA) processed 2 495 applications for rights in new variety of plants (variety rights), representing an annual growth of 30% in average. There were 449 applications in the first seven months of 2005, an increase of 35% over the same period in 2004. The top ten in terms of number of applications, by province and in order, are Sichuan, Shandong, Jilin, Liaoning, Henan, Jiangsu, Hebei, Beijing, Hunan and Heilongjiang. There were 1 758 applications in total from these provinces and cities, accounting for 71% of the national total. A pilot scheme on enforcement of plant varieties protection was launched in 2001 in 12 selected provinces and cities. Applications have spiralled and law enforcement has been strengthened in those pilot provinces and cities thereafter. As at the end of 2004, a total of 863 cases of infringement or piracy of the rights of new varieties of agricultural plants were detected. The principle of fair competition in the market was upheld.

Hunan is one of the 12 pilot points to protect new plant varieties. The new variety of rice “Pei'ai 64S (培矮 64S)” bred by the Hunan Hybrid Rice Research Center is among the first batch of new varieties of agricultural plants that have been granted variety rights by MoA. It has been awarded a certificate of Variety Rights Number One by the state. In 2004, Hunan vigorously promoted the protection of new varieties of plants and intellectual property in the agricultural sector. The Hunan Provincial Steering Group on Agricultural Plant Varieties Protection has been set up, comprising representatives from the Provincial Department of Agriculture, Agricultural University and Academy of Agricultural Sciences. The major tasks of the Group are to publicise and promote the Regulations on the Protection of New Varieties of Plants and to enhance the provincial protection of new varieties of agricultural plants that fall within the scope of the National List Of Protected Plant Varieties⁶. Steering institutes have been set up in rice planting areas such as Hengyang (衡陽), Yueyang (岳陽) and Changde (常德) where scientific researches on rice breeding are relatively advanced. The law enforcement of plant varieties protection has been strengthened, making positive and valuable contribution to the agricultural development in Hunan.

Intellectual Property Protection for Plant Breeders

Plant varieties protection refers to the protection of the rights of plant breeders.

⁶ For details on the National List Of Protected Plant Varieties, please refer to the following paragraphs.

The target of protection is not the plants but the rights of the plant breeders. Such rights are granted by the government to give plant breeders the exclusive right to use the plant varieties. The rights of plant breeders, similar to patents, trademarks and copyright, fall into the realm of IPR. No person or entity shall, without the consent of the plant breeder, engage in any commercial activity by using the protected variety bred by the breeder. At present, the protection of variety rights in the Mainland is restricted to the reproductive materials¹ of the protected varieties. In other words, no entity or person shall, without the consent of the variety rights holders, produce or sell for commercial purposes the reproductive materials of protected varieties, or use for commercial purposes the reproductive materials of protected varieties repeatedly to produce the reproductive materials of another variety.

Licensing Right of Variety Rights Holders

Variety rights holders have exclusive rights in the protected varieties. Not only are they entitled to produce or sell the reproductive materials of the protected varieties, but also they may license other entities or persons to use their variety rights. This is the licensing right of variety rights holders. In granting the rights, both parties shall enter into a written agreement in which the rights and obligations of both parties shall be spelt out. The variety rights holders shall still be able to exercise their rights as long as the licensing is not exclusive. For plant varieties that are bred in large quantities in large areas, usually the breeders do not take direct control of the reproduction process. It is more common for them to co-operate with dealers or other intermediaries by charging a certain licensing fee per unit price of the reproductive materials. For more valuable varieties, the breeders may control the reproduction or sale processes and obtain a direct return from the sale of the reproductive materials.

In Mainland China, plant varieties protection is undertaken by MoA and the State Forestry Administration (SFA). MoA is responsible for protecting the variety rights relating to grains, cotton, oil, hemp, sugar, vegetable, tobacco, grass, green manure, edible fungi, fruit trees (fruit), herbal flowers, mulberries, tea, herbal medicine, rubber, etc, while SFA for the variety rights relating to lumber, bamboo, woody climbers, woody ornamental plants (including woody flowers), fruit trees (dry fruit), woody oil, beverages, seasonings, woody medicine, etc. To qualify as a protected variety, the variety must be cultivated or developed from a discovered wild plant. It must also have an appreciate denomination and the characteristics of novelty, distinctness, uniformity and stability. Plant variety rights are granted solely by the state. Governments at provincial level or below do not have the

¹ Reproductive materials include stocks (including tree stocks), seeds (including roots, stems, leaves, flowers and fruit) and any parts of a plant (including tissues and cells) used for the purpose of reproduction.

authority to grant such rights.

At present, plant varieties protection is at an initial stage in the Mainland. As it is impossible to extend the protection to all plants and all parts of plants, meanwhile, only those varieties with better commercial potential and more in-depth studies are covered. Protected plant varieties are publicised through the National List of Protected Plant Varieties issued by MoA and SFA. Since the implementation of plant varieties protection in 1999 in the Mainland, five lists of protected agricultural plant varieties and four lists of protected forestry plant varieties have been publicised and implemented, making the number of protected varieties to 119. Among these, 41 are agricultural plant varieties, including maize, potato, soybean, peanut, sweet potato, lychee, watermelon, apple, mandarin orange, banana, etc and 78 are forestry plant varieties, including peony, plum, persimmon, apricot, ginkgo, sweet-scented osmanthus, clove, etc. The lists provide the scope of protected plant varieties. Application for plant varieties protection is restricted to those that fall within the scope.

Promotion of Agricultural Development and Increase in Farmers' Income

The primary objectives of plant varieties protection are to encourage the breeding and use of new plant varieties, to promote agricultural development and to generate income for farmers. By establishing a fair and just mechanism for competition in the plant breeding industry, plant varieties protection inspires plant breeders to breed new varieties of plants. They no longer have to worry about the breeding cost nor the cost of seeds as long as they can generate income by lawfully transferring their newly bred varieties for a consideration or forming a joint venture. Moreover, part of the income can be invested into the breeding of new plant varieties, which in turn will multiply the yields and quicken the processes, eventually enhancing the efficiency of breeding new plant varieties.

Assignment of Variety Rights

According to the Regulations on the Protection of New Varieties of Plants, the right to file an application for variety rights in respect of a new plant variety and the variety rights subsequently granted may be lawfully assigned. The assigned rights shall belong to the assignee upon the completion of the assignment. The parties involved shall conclude a written agreement and shall register the assignment with the examining and approving authorities. At present, scientific research institutes in possession of new plant varieties bred through regular crossbreeding can hardly have their interests protected in reality even if they have officially registered their rights. Therefore, they will usually assign their rights to seeds enterprises by a one-off auction.

In the past two years, Hunan has aggressively promoted the protection of new plant varieties. It is commonplace for plant breeders to profit from their protected varieties. An example is the new rice varieties of “Zhu Liangyou 83 (株兩優 83)” and “Zhu Liangyou 100 (株兩優 100)” bred by the Xiangtan (湘潭市) Municipal Institute of Agricultural Sciences. The former has been granted variety rights by the state. These two new rice varieties have the characteristics of high quality, high yield and strong resistance to diseases and pests. In order to introduce them to the market as soon as possible, the Xiangtan Municipal Institute of Agricultural Sciences looked for buyers on the Internet, and subsequently entered into agreements with Yahua Seeds (亞華種業) and Delong Seeds (德龍種業) in Hunan. Yahua Seeds purchased the right of production and trade of the seeds of “Zhu Liangyou 83” at RMB 0.45 million for a period of four years, and Delong Seeds of “Zhu Liangyou 100” at RMB 0.5 million.

In another case of variety rights assignment, the Hengyang Municipal Institute of Agricultural Sciences received an assignment fee of more than RMB 3 million, of which RMB 0.5 million went to the plant breeder. In a contract for exploitation of a new variety of cotton for a consideration signed with the Hunan Provincial Cotton Seed Company, Yahua Seeds, Longping High-Tech (隆平高科) and some cotton seed enterprises in other provinces, the Hunan Provincial Cotton Research Institute received an annual fee of RMB 1 million, and the plant breeder was entitled to a certain percentage of the fee. Through assigning plant variety rights and licensing enterprises to use the protected varieties for commercial purposes, plant breeders have obtained substantial capitals for development. As a result, more private capitals have been invested in the scientific breeding of new plant varieties, injecting moray to the research and development of plant breeding in Hunan.

Hunan has a population of 66.98 million, of which 81% (54.26 million) live in rural areas. Its rural population is the second largest in the eight Pan-PRD provinces/region. As Hunan is a major agricultural province, the breeding of agricultural plants not only has a bearing on the economic development of the province, but also is crucial to the incomes of tens of thousands of rural residents and to social stability, hence spans far and wide impacts. Through promoting agricultural development and raising the incomes of Hunan’s rural residents, the protection of the intellectual property of new plant varieties has significant implications on the stability of business and investment environment of Hunan. The development of plant varieties protection in Hunan is worth the attention of potential Hong Kong investors.

Hainan Plagued by Trademark Squatting

“Commercial warfare” among enterprises has extended from product development, sales and marketing to trademark squatting in recent years, amidst an increasingly competitive market environment. Disputes relating to trademark squatting which are becoming commonplace both in the Mainland and the world at large have aroused extensive concern. In China, trademark squatting is relatively prominent in Hainan Province. According to the Trademark and Advertisement Management Office under the Hainan Administration for Industry and Commerce, quite a number of Hainan enterprises are still unaware of the importance of trademark registration. As at end-2004, the number of registered trademarks in Hainan stood at 10 708, amounting to less than 5% of that in Guangdong. Among them, 89 are recognised as famous trademarks by the provincial administration; only five are well-known marks¹ recognised by the state; and just seven geographical indication certification marks² are registered at the state level. The low registration in Hainan is attributable to the inadequate awareness of trademark registration among quite a number of enterprises and relevant Government departments in the province, rather than a scarcity of products or resources warranting registration. Enterprises often regret when the brand names they built were registered as trademarks by others.

Trademark Squatting

The meaning of “trademark squatting” has evolved in two stages. Initially, the subject of trademark squatting was basically confined to an unregistered trademark whereas at present, the meaning of trademark squatting has been broadened to encompass the act of applying for the registration of another person’s publicly known trademark for dissimilar goods or services. Some academics consider it difficult to determine whether trademark squatting is an improper competitive practice under the system of granting the exclusive right to use a trademark on the basis of the “registration principle”³. They are of the view that such practice is simply unreasonable but nevertheless lawful. It is because although holding onto a trademark first used by another person and for which goodwill has been built up is contrary to generally accepted commercial ethics and the principle of fair competition, the undue benefits it brings do not constitute any prejudice to

¹ For information on famous trademarks and well-known marks, please refer to the article “Yunnan Promotes Adoption of Trademark Strategy by Enterprises” in the part of this report covering the south-western region.

² For information on geographical indication certification marks, please refer to the article “Guangxi Starts to Protect Geographical Indications of Local Specialties” in the part of this report covering the south-western region.

³ Please refer to the description below for the system of granting the exclusive right to use a trademark on the basis of the “registration principle”.

the lawful rights of the other person as the law does not protect prior use protection.

Famous Hainan Brands Squatted

Not long after the inception of Bo'ao Forum of Asia⁴, the name "Bo'ao" was registered by a Qingdao company as a trademark for liquor products. Hainan Province has been fortunate enough to spot the trademark squatting promptly and managed to secure the brand "Bo'ao" by having "Bo'ao" registered as trademarks under other classes. "Jiaji Duck" (嘉積鴨) of Qionghai City (瓊海市) is one of the Four Great Dishes of Hainan, but "Jiaji Duck" is not registered. However, in April 2004, "Jiaji" was registered by a culturist of Qionghai City of Guangdong origin as a trademark for meat products. The centuries old famous "Jiaji Duck" of Hainan may be wiped out as a result.

Wuzhishan City (五指山市), a famous scenic spot in Hainan is another case in point. Established in Wuzhishan City, a coordination group on trademark registration of famous, quality and special products of the City conducted a survey in August 2004. The findings of the survey indicate that a total of 46 trademarks of "Wuzhishan" are currently registered under 26 classes of goods and services across the country, ranging from food, pharmaceuticals, clothing to services sector. Nearly the majority of classes of goods and services of high commercial and social value are covered. Among the enterprises having the registered trademarks, only one is in Wuzhishan City. The remaining 15 are in no way related to the City. Of these, Hainan Wuzhishan Industrial Corporation registered in Haikou City alone has registered 20-odd trademarks of "Wuzhishan", such as "Wuzhishan Mineral Water" and "Wuzhishan Coffee" and the number of similar trademarks being registered is still on the increase.

In early 2005, a mass media agency of Hainan reported the squatting of the brand "Jiankangdao (健康島)" by a Beijing natural person surnamed Kao, causing panic in the province. "Jiankangdao" is a new brand used initially by Hainan Province. With great and dedicated efforts, the then Provincial Governor-cum-Provincial CPC Secretary Wang Xiaofeng (汪嘯風) created the brand in 2003 after the SARS outbreak. It is estimated that at least tens of millions of dollars have been spent to promote the brand by the provincial government, the enterprises as well as the community over the past two years, while the amount of capital put to promote and publicise the brand outside the province can hardly be estimated. "Jiankangdao" of Hainan has now become a popular and well-known brand in the Mainland and people have already identified "Jiankangdao" with Hainan.

It is learned that the trademark squatter has requested to register the trademark “Jiankangdao” to cover items ranging from journal, magazine, book, printed publication, newspaper, manual, newsletter, picture poster, handbook to printed matters. In other words, once the trademark is registered, Hainan, being the creator of the brand “Jiankangdao”, can no longer use “Jiankangdao” for promotional materials like picture posters, manuals and handbooks in its external publicity and promotion activities, or otherwise will be regarded as trademark infringement. In establishing the brand “Jiankangdao”, Hainan has accumulated enormous intangible assets by the synergy of the community, mobilising more than 10 cities and counties and investing tens of millions of dollars in the past two years. However, the assets so accumulated may be lost, thereby causing significant adverse impact on Hainan’s promotional efforts in its travel, real estate, pharmaceuticals, agricultural, and convention and exhibition industries in the future.

Know the Trademark Law

According to the Trademark Law, geographical names as the administrative divisions at or above the county level⁷ should not be used as ordinary trademarks available for registration by individuals. Bo’ao and Jiaji are geographical names of towns below the county level. They are registrable and have been registered by squatters. However, Wuzhishan is a geographical name of a county-level city and shall not be registered under the Trademark Law. In November 2004, Wuzhishan City, in accordance with the Trademark Law, applied to the Trademark Office under the State Administration of Industry and Commerce for the revocation of 10 of those trademarks registered under the name of the City since 15 July 2001 (the date on which the City was renamed Wuzhishan City²). However, the application was not supported by the Trademark Office. In its reply in December 2004, the Trademark Office pointed out that “Wuzhishan”, as a famous scenic spot in China, has other meanings in addition to being the name of an administrative area. These meanings may be even more prominent than than of being a geographical name of an administrative area. “Huangshan” City (黃山市) of Anhui Province and “Wudalianchi” City (五大蓮池市) of Heilongjiang Province were quoted by the Trademark Office as examples of famous scenic spots whose names were also geographical names of administrative areas at prefecture and

⁴ The inception of Bo’ao Forum of Asia was officially announced in a meeting held at Bo’ao, Qionghai City of Hainan Province on 27 February 2001.

⁷ Administrative areas in the Mainland are divided into four levels. Divisions at the provincial level are the highest (including provinces, municipalities and autonomous regions), to be followed by divisions at the prefecture level (including prefecture-level cities, prefectures and autonomous states), divisions at the county level (including counties, autonomous counties, county-level cities and districts under the jurisdiction of cities.) and at the township level (including villages, ethnic villages, towns and streets).

² On 15 July 2001, with the approval of the Ministry of Civil Affairs of the State Council, the Hainan Provincial Government issued an official reply on approving the renaming of Tungshi City (通什市) to Wuzhishan City. The administrative areas originally under the jurisdiction of the City, the institutional

county levels respectively. Such names have already been registered as trademarks. Accordingly, Wuzhishan is registrable as well.

As regards “Jiankangdao”, although it has become synonymous with Hainan Province, it is neither a geographical name of an administrative area nor a generic name³. It is a name created by a place for distinguishing itself from other places and so is entirely registrable under the relevant provisions. The Trademark Law provides that “in respect of any visual sign capable of distinguishing the goods or service of one natural person, legal entity or any other organisation from that of others, including any word, design, etc., an application may be filed for registration”. Hence, “Jiankangdao” is registrable.

Experts point out that the squatting of well-known trademarks in Hainan in recent years is mainly due to weak awareness of trademark in the province. The Trademark Law of the Mainland adopts the “registration principle”⁴, to confer the exclusive right to use a trademark, that is, an application for registration forms the legal basis for acquiring such right. The right is given to the first person who applies for registration and prior use is not a consideration. If a trademark proprietor does not apply to the Trademark Office for registration, he cannot acquire the exclusive use to the trademark and the trademark used by him is not legally protected. As such, under the “registration principle”, the first person to file a trademark is entitled to its exclusive use. Such legal practice opens up the possibility and inevitability of trademark squatting.

Early Registration of Trademarks

Among the squatting cases, it is noted that the trademarks are usually registered by natural persons or some small companies. The aims of the squatters are to “bangdakuan”¹ and “dabianche” (get a free ride) instead of preventing others from using the trademarks. They much welcome the continued use of the trademarks by the original users and the wide publicity given to the trademarks. In this way, their marks can become famous without

organisation and personnel arrangements remain unchanged after the renaming.

³ Under the Trademark Law, generic names shall not be registered as trademarks. For instance, “huangjiu” (yellow rice wine) and “longjing” (a famous green tea) are generic names of products of a particular class of goods. They are not allowed to be registered as trademarks.

⁴ Under the “use principle”, as opposed to the “registration principle”, the grant of a trademark is based on the first-to-use principle. The first person to use a trademark is entitled to the exclusive right to use it. Application for registration of a trademark is not a pre-requisite for acquiring and being conferred such right. At present, only a few countries such as the United States adopt the “use principle” whereas most countries including China adopt the “registration principle”.

¹ “Bangdakuan” is a common means of financing by getting capital from one or more strong and well-capitalised companies. In general, it also means to take advantage of the rich or strike deals between power and money.

extra efforts, and the value of the marks will increase exponentially. When the marks acquire a certain high value, the individuals or companies whose trademarks are squatted will approach the squatters to negotiate for assignment of trademarks on whatever terms demanded by the squatters, or else, they can only helplessly witness the famous brands built with their own manpower, money and resources being hawked openly.

Against this background, under the “registration principle”, the key to fight off trademark squatting is to enhance the awareness of trademark protection and to get trademarks registered. So long as the operating entities have a strong awareness of trademark rights and have their trademarks registered before using or when using the trademarks, trademark squatting cases can be avoided. In Hainan, a large number of famous trademarks have recently been squatted. Hong Kong enterprises selling branded products in the Mainland should be aware of this trend and take caution against it. When exploring the Mainland market, Hong Kong enterprises should have their trademarks registered first. They need to be familiar with the Mainland’s Trademark Law as well as the relevant procedures and regulations, so that they can complete the registration of their trademarks in the shortest possible of time to ensure that their trademarks are effectively protected. In this way, they will be able to avoid unnecessary losses that may be incurred just because someone else registers their trademarks ahead of them.

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Patent applications and grants in the Pan-PRD “9+2” Region

	Number of applications			Year-on-year growth (%)	Number of grants			Year-on-year growth (%)
	1985-2004	2003	2004		1985-2004	2003	2004	
National	1,874,127	251,238	278,943	11.0	1,093,246	149,588	151,328	1.2
Fujian	51,257	7,236	7,498	3.6	32,285	5,377	4,758	-11.5
Jiangxi	22,764	2,434	2,685	10.3	11,789	1,238	1,169	-5.6
Hunan	63,111	6,054	7,693	27.1	32,792	3,175	3,281	3.3
Hainan	4,680	445	375	-15.7	2,610	296	278	-6.1
Guangxi	23,633	2,250	2,202	-2.1	13,184	1,331	1,272	-4.4
Yunnan	20,133	1,966	2,132	8.4	12,752	1,213	1,264	4.2
Guizhou	12,762	1,242	1,486	19.6	6,699	723	737	1.9
Sichuan	62,095	7,443	7,260	-2.5	36,966	4,051	4,430	9.4
Guangdong	263,734	43,186	52,201	20.9	172,554	29,235	31,446	7.6
Hong Kong	15,949	1,816	2,148	18.3	12,619	1,565	1,495	-4.5
Macao	163	18	9	-50.0	99	14	12	-14.3
Percentage of the national total (%)								
4 south-eastern provinces	7.6	6.4	6.5	-	7.3	6.7	6.3	-
4 south-western provinces/region	6.3	5.1	4.7	-	6.4	4.9	5.1	-
Guangdong	14.1	17.2	18.7	-	15.8	19.5	20.8	-
Hong Kong and Macao	0.9	0.7	0.8	-	1.2	1.1	1.0	-
8 provinces /regions	13.9	11.6	11.2	-	13.6	11.6	11.4	-
“9+2”	28.8	29.5	30.7	-	30.6	32.2	33.1	-

Source: State Intellectual Property Office

Applications and grants of three types of patent in the Pan-PRD “9+2” Region

	Applications (No)						Grants (No)					
	1985-2003			2003			1985-2003			2003		
	Invention	Utility model	Design	Invention	Utility model	Design	Invention	Utility model	Design	Invention	Utility model	Design
National	283,558	870,898	440,959	56,769	107,842	86,627	48,419	577,170	316,351	11,404	68,291	69,893
Fujian	4,362	17,161	22,236	797	2,554	3,885	641	10,575	16,311	137	1,658	3,582
Jiangxi	4,013	11,752	4,314	832	1,071	531	550	7,264	2,806	97	685	456
Hunan	9,956	37,620	7,844	1,492	3,124	1,438	1,550	23,331	4,630	346	1,888	941
Hainan	932	1,437	1,936	110	147	188	97	735	1,501	28	97	171
Guangxi	3,749	13,201	4,483	452	1,212	586	517	8,101	3,294	83	790	458
Yunnan	3,706	9,387	4,908	574	788	604	880	6,800	3,808	173	527	513
Guizhou	2,654	6,141	2,485	385	566	291	371	3,770	1,821	79	355	289
Sichuan	10,207	29,717	14,919	1,475	2,865	3,103	1,938	20,264	10,334	342	1,722	1,987
Guangdong	20,758	64,012	126,779	6,181	12,985	1,565	2,556	41,031	97,522	953	7,921	20,361
Hong Kong	1,602	2,347	9,895	279	441	1,096	348	1,754	9,024	80	314	1,171
Macao	24	83	52	3	8	7	2	36	49	1	5	8
Percentage of the total number of the three types of patents (%)												
4 south-eastern provinces	15.6	55.0	29.4	20.0	42.6	37.4	4.1	59.9	36.1	6.0	42.9	51.1
4 south-western provinces/region	19.2	55.4	25.4	22.4	42.1	35.5	6.0	62.9	31.1	9.3	46.4	44.4
Guangdong	9.8	30.3	59.9	29.8	62.6	7.5	1.8	29.1	69.1	3.3	27.1	69.6
Hong Kong and Macao	11.6	17.4	71.0	15.4	24.5	60.1	3.1	16.0	80.9	5.1	20.2	74.7
8 provinces/region	17.3	55.2	27.6	21.0	42.4	36.6	5.0	61.3	33.7	7.4	44.4	48.2
“9+2”	13.6	42.4	44.0	24.4	49.9	25.7	3.3	43.5	53.2	4.8	33.1	62.1
National	17.8	54.6	27.6	22.6	42.9	34.5	5.1	61.3	33.6	7.6	45.7	46.7

Source: State Intellectual Property Office

Trademark applications and registrations in the Pan-PRD “9+2” Region

	Applications (No)		Year-on-year growth (%)	Registrations (No)		Year-on-year growth (%)
	2002	2003		2002	2003	
National	321,034	405,620	26.3	169,904	206,070	21.3
Fujian	19,612	24,386	24.3	8,874	11,616	30.9
Jiangxi	3,606	4,967	37.7	1,432	2,308	61.2
Hunan	7,192	9,929	38.1	3,270	4,598	40.6
Hainan	1,709	1,856	8.6	865	902	4.3
Guangxi	2,690	3,299	22.6	1,625	1,839	13.2
Yunnan	2,860	4,103	43.5	1,679	2,210	31.6
Guizhou	1,945	2,222	14.2	1,157	1,398	20.8
Sichuan	10,885	14,577	33.9	6,381	7,357	15.3
Guangdong	62,514	76,528	22.4	31,708	38,708	22.1
Hong Kong	8,518	8,354	-1.9	4,908	4,578	-6.7
Macao	125	171	36.8	49	49	0.0
Percentage of the national total						
4 south-eastern provinces	10.0	10.1	-	8.5	9.4	-
4 south-western provinces/region	5.7	6.0	-	6.4	6.2	-
Guangdong	19.5	18.9	-	18.7	18.8	-
Hong Kong and Macão	2.7	2.1	-	2.9	2.2	-
8 provinces/region	15.7	16.1	-	14.9	15.6	-
“9+2”	37.9	37.1	-	36.5	36.7	-

Source: State Administration for Industry and Commerce

Copyrights imported and exported by the nine Pan-PRD provinces/region in 2004

	Copyrights imported (No)				Copyrights exported (No)					
	Total	Books	Audio products	Video products	Others	Total	Books	Audio products	Video products	Others
National	11,746	10,040	331	159	1,216	1,362	1,314	4	4	40
Fujian	82	57	0	25	0	3	3	0	0	0
Jiangxi	35	34	0	0	1	0	0	0	0	0
Hunan	112	110	0	0	2	4	4	0	0	0
Hainan	112	112	0	0	0	2	2	0	0	0
Guangxi	192	192	0	0	0	8	8	0	0	0
Yunnan	61	61	0	0	0	11	11	0	0	0
Guizhou	15	15	0	0	0	0	0	0	0	0
Sichuan	40	40	0	0	0	11	11	0	0	0
Guangdong	448	103	101	65	179	25	8	0	0	17
Percentage of the national total (%)										
4 south-eastern provinces	2.9	3.1	0.0	15.7	0.2	0.7	0.7	0.0	0.0	0.0
4 south-western provinces/region	2.6	3.1	0.0	0.0	0.0	2.2	2.3	0.0	0.0	0.0
Guangdong	3.8	1.0	30.5	40.9	14.7	1.8	0.6	0.0	0.0	42.5
8 provinces/region	5.5	6.2	0.0	15.7	0.2	2.9	3.0	0.0	0.0	0.0
9 provinces/region	9.3	7.2	30.5	56.6	15.0	4.7	3.6	0.0	0.0	42.5

Source: National Copyright Administration

Trademarks Counterfeiting Cases investigated in the nine Pan-PRD provinces/region in 2003

	Number of cases	Number of closed cases		Situation		
		National (No)	Overseas (No)	Trade logos confiscated or eliminated (10 000)	Infringing copies	Fine Amount (RMB 10,000)
National	26,488	23,994	2,029	5,840	3,542	19,655
Fujian	1,763	1,672	72	285	1,028	824
Jiangxi	472	459	5	58	9	132
Hunan	1,310	1,265	0	373	14	801
Hainan	126	122	0	41	2	37
Guangxi	544	530	1	14	12	194
Yunnan	807	788	19	38	757	152
Guizhou	189	167	1	39	34	30
Sichuan	1,286	1,248	23	100	267	1,565
Guangdong	1,743	1,108	607	847	107	2,180
Percentage of the national total (%)						
4 south-eastern provinces	13.9	14.7	3.8	12.9	29.7	9.1
4 south-western provinces/region	10.7	11.4	2.2	3.3	30.2	9.9
Guangdong	6.6	4.6	29.9	14.5	3.0	11.1
8 provinces/region	24.5	26.1	6.0	16.2	59.9	19.0
9 provinces/region	31.1	30.7	35.9	30.7	62.9	30.1

Source: State Administration for Industry and Commerce

Pirated items confiscated in the nine Pan-PRD provinces/region in 2004

Nos ('000)	Total	Books	Periodicals	Softwares	Audio and Video products	Electronic publications	Others
National	85,058	18,692	1,822	5,527	39,374	19,218	424
Fujian	1,272	127	14	19	1,037	29	46
Jiangxi	550	89	0	119	122	219	0
Hunan	2,164	861	57	138	972	125	10
Hainan	151	62	30	5	43	0	11
Guangxi	1,513	781	30	54	595	52	0
Yunnan	149	140	5	2	3	0	0
Guizhou	1,591	375	3	9	1,008	194	3
Sichuan	1,578	569	23	174	671	131	11
Guangdong	24,465	2,555	43	582	16,115	5,051	120
Percentage of the national total (%)							
4 south-eastern provinces	4.9	6.1	5.6	5.1	5.5	1.9	15.8
4 south-western provinces/region	5.7	10.0	3.3	4.3	5.8	2.0	3.2
Guangdong	28.8	13.7	2.3	10.5	40.9	26.3	28.2
8 provinces/region	10.5	16.1	8.9	9.4	11.3	3.9	19.0
9 provinces/region	39.3	29.7	11.3	19.9	52.2	30.2	47.2

Source: National Copyright Administration

Law enforcement cases of patents in the nine Pan-PRD provinces/region

	1985-2003						2003									
	Infringement disputes		Other disputes		Investigated acts of passing off patents		Investigated acts of passing off the patents of others		Infringement disputes		Other disputes		Investigated acts of passing off patents		Investigated acts of passing off the patents of others	
	Cases filed	Cases closed	Cases filed	Cases closed	Cases filed	Cases closed	Cases filed	Cases closed	Cases filed	Cases closed	Cases filed	Cases closed	Cases filed	Cases closed	Cases filed	Cases closed
National	8,755	7,461	1,983	1,712	7,798	7,539	313	303	1,448	1,179	97	74	1,419	1,255	160	157
Fujian	193	154	24	21	46	42	1	1	34	19	0	0	6	4	0	0
Jiangxi	145	71	26	17	102	96	5	5	17	14	2	2	29	29	2	2
Hunan	233	210	146	130	247	247	7	7	32	30	6	3	79	79	5	5
Hainan	55	54	7	6	33	33	5	5	5	5	0	0	6	6	2	2
Guangxi	81	79	53	37	16	16	0	0	13	13	0	0	5	5	0	0
Yunnan	103	98	27	22	6	6	9	9	21	17	0	0	0	0	2	2
Guizhou	74	59	23	19	226	187	1	0	8	4	5	4	48	28	0	0
Sichuan	440	358	133	108	170	1,565	15	14	100	88	11	8	34	33	10	9
Guangdong	2,059	1,772	191	168	635	630	94	92	350	289	6	3	132	128	68	68
Percentage of the national total (%)																
4 south-eastern provinces	7.2	6.6	10.2	10.2	5.5	5.5	5.8	5.9	6.1	5.8	8.2	6.8	8.5	9.4	5.6	5.7
4 south-western provinces/region	8.0	8.0	11.9	10.9	5.4	23.5	8.0	7.6	9.8	10.3	16.5	16.2	6.1	5.3	7.5	7.0
Guangdong	23.5	23.8	9.6	9.8	8.1	8.4	30.0	30.4	24.2	24.5	6.2	4.1	9.3	10.2	42.5	43.3
8 provinces/region	15.1	14.5	22.1	21.0	10.8	29.1	13.7	13.5	15.9	16.1	24.7	23.0	14.6	14.7	13.1	12.7
9 provinces/region	38.6	38.3	31.8	30.8	19.0	37.4	43.8	43.9	40.1	40.6	30.9	27.0	23.9	24.9	55.6	56.1

Source: State Intellectual Property Office

IV. English-Chinese Glossary of Terms

Administrative area	行政區域
Agreement on trade-related aspects of intellectual property rights (TRIPS)	與貿易有關的知識產權協議
Awareness of intellectual property protection	保護知識產權意識
Bo'ao Forum for Asia	博鰲亞洲論壇
Bohai Economic Rim	環渤海經濟區
Copyright, trade of copyright	版權、版權貿易
Counterfeiting	假冒
County level, city at county level	縣級、縣級市
Design	外觀設計
Economic Zone on the West Coast of the Taiwan Strait	海峽西岸經濟區
General Administration of Customs	海關總署
General Agreement on Tariffs and Trade (GATT)	關稅貿易總協定
High and new technology	高新技術
Illegal download	網絡非法下載
Intellectual property protection	知識產權保護
Intellectual property right	知識產權
Intellectual property right intermediary service	知識產權中介服務
Invention	發明
Judiciary protection	司法保護
Law enforcement	行政執法
Layout-design of integrated circuits	集成電路佈圖設計
Ministry of Agriculture	農業部
National Copyright Administration	國家版權局
Paris Convention for the Protection of Industrial Property	巴黎公約
Patent	專利

Patent agent	專利代理人
Patent application, patent grant	專利申請、專利授權
Patent Cooperation Treaty	專利合作條約
Piracy	盜版
Plant breeder	植物育種者
Plant varieties protection	植物新品種保護
Prefecture level, city at prefecture level	地級、地級市
Reproductive material	繁殖材料
State Administration for Industry and Commerce	國家工商行政管理總局
State Forestry Administration	國家林業局
State Intellectual Property Office	國家知識產權局
The Guangdong/Hong Kong Expert Group on the Protection of Intellectual Property Rights	粵港保護知識產權合作專責小組
The Supreme Court of the People's Republic of China	最高人民法院
Town	鎮
Trademark	商標
Trademark application, trademark registration	商標申請、商標註冊
Trademark squatting	商標搶註
Transfer of variety right	品種權轉讓
Utility model	實用新型
World Intellectual Property Day	世界知識產權日
World Intellectual Property Organization (WIPO)	世界知識產權組織
World Trade Organization (WTO)	世界貿易組織
Yangtze River Delta	長三角