

## **China's Intellectual Property Protection in 2009**

The year of 2009 was the key year to fully initiate the implementation of the national intellectual property (IP) strategy of China. Closely focusing on the central task of economic construction, the Chinese government made great efforts to withstand the impact of the international financial crisis, strengthened the implementation of the national IP strategy, promoted various IP protection work, and scored periodical achievements. The IP legislation work achieved new development, which further improved the IP system; the capabilities of examination and registration of intellectual property rights (IPRs) were prominently enhanced with new breakthroughs; the IP administrative enforcement was promoted and the trans departmental cooperation was enhanced; the key role of judicial enforcement in IP protection was strengthened with various work entering a new stage; the construction of IP related mechanism and system was further promoted and improved; the IP publicity work was effective and reached a new level; the IP training work continued its progress and displayed a new outlook; and the IP international exchange and cooperation was further developed.

### **I. New Progress Achieved in the IP Legislation Work**

In 2009, a series of IP laws, regulations and rules were formulated and revised according to the practical needs. The IP legislation work in China made new achievements.

On October 1st, 2009, the Patent Law after the 3rd revision was implemented. The revised patent law prescribed stricter conditions to patent granting, improved the mechanism of compulsory license, strengthened patent protection, all of which are conducive for China to become an innovative nation. On December 30th, 2009, the Decision on the Amendments of the Implementing Regulations of the Patent Law of the People's Republic of China(draft) was reviewed and passed. The amended Implementing Regulations of the Patent Law would come into force on February 1st, 2010. The Measures on Patent Administrative Enforcement, the Measures on Implementing Compulsory Licenses of Patents, and other relevant regulations of relevant agencies were promulgated or amended following the revision of the patent law.

In 2009, the third revision of the Trademark Law continued to be pushed forward. The revised version of the Trademark Law (for review) was submitted to the State Council. Meanwhile, the formulation and amendments of other related regulations and rules including the Implementing Regulations of the Trademark Law, the Regulations on Trademark Commissioning, were carried out accordingly. The Rules on the Certification of Well Known Trademarks by the State Administration for Industry and Commerce, and the Regulating Opinions on the Cases related to the Certification of Well Known Trademarks Handled by the Trademark Office under the State Administration for Industry and Commerce were formulated, which further improved the review and adjudication system of well known trademarks.

In 2009, the revision work of the Copyright Law started. The National Copyright Administration of China (NACA)amended and issued the Implementing Measures on Copyright

Administrative Punishment, and actively promoted the draft work on the Payment Standards on the Statutory Use of Teaching Materials, the Measures on the Registration of Copyright Pledge Contracts, the Administration Measures on the Registration and Recording of Copyright Contracts, and other rules and regulating documents.

On November 10th, 2009, the State Council promulgated the Provisional Measures on Payments for Playing Recording Products at Radio and TV Broadcasting Stations. The Measures took the interests of right owners, users and other stake holders into consideration, solved the long time problem for lacking payment standards in using recording products by radio and TV broadcasting organizations, and would come into force on January 1st, 2010.

In 2009, to simplify the IP protection procedure at customs and further clarify the rights and obligations of right owners, senders and receivers of cargoes, the General Administration of Customs (GAC) accomplished the amendment of the Implementing Measures of the Regulations on the Custom Protection of IPRs after widely soliciting the opinions of right owners and local customs. The Measures was promulgated on March 3rd, 2009 and came into force on July 1st.

On December 26th, 2009, the Standing Committee of the National People's Congress reviewed and passed the Infringement Liability Law of the People's Republic of China, which clearly included copyright, patents, and trademarks in the protection scope of legal rights of civil entities, supplementing and improving the legal protection system of IPRs.

In 2009, the Supreme People's Court (SPC) promulgated several judicial interpretations and regulating documents, which further clarified the trial rules on related cases. On April 21st, 2009, SPC promulgated the Opinions on Several Issues concerning Intellectual Property Trials Serving the Overall Objective under the Current Economic Situation, addressing that: "at the current economic situation, the IP judicial protection can only be strengthened and improved, and cannot be weakened or loosened", and clarified and improved a series of IP judicial policies, which brought wide and positive effects in the country. On April 23rd, SPC promulgated the Interpretation on the Application of Laws related to Well Known Trademark Protection on the Trial of Civil Cases Involving Trademark Infringement by SPC, which further regulated the judicial determination and protection of well known trademarks, and clarified the conditions and scope of judicial determination of well known trademarks. On December 28th, SPC promulgated the Interpretation on the Application of Laws on the Trial of Patent Disputes by SPC, which regulated interpretation rule of patent claims, clearly identified the protection scope of patent right and clarified the judging criteria for patent infringement. The promulgation of the Interpretation has an important guidance meaning in supporting the appropriate implementation of the revised patent law, realizing a good trial of patent cases, and actively promoting innovation.

## **II. IPR Examination and Registration Advanced Steadily with New Breakthroughs**

In 2009, there were impressive breakthroughs in IPR examination and registration despite the financial crisis.

In 2009, patent applications maintained continuous and fast growth. State Intellectual Property Office of the People's Republic of China (SIPO) accepted 976 686 patent applications in 2009, up 17.9%; 877 611 of which were from home, representing 89.9% of the total and up 22.4%; 99 075 of which were from abroad, representing 10.1% of the total and the year on year decrease of 10.9%.

By the end of 2009, China accepted cumulative 5 822 661 patent applications, 4 898 473 of which were from home, representing 84.1%; 924 188 of which were from abroad, representing 15.9%.

In 2009, SIPO granted 581 992 patents, a year on year increase of 41.2%; among which, 501 786 were granted to domestic applications, representing 86.2% of the total and a year on year increase of 42.4%; 80 206 were granted to foreign applications, representing 13.8% of the total and a year on year increase of 34.6%. Invention patents granted to domestic applications accounted for 50.9%, a year on year increase of 1.2%. This class of patent overtook their foreign counterparts for the first time.

By the end of 2009, SIPO had granted accumulated 3 083 260 patents in total, 2 644 571 of which were domestic applications and 438 689 were foreign applications, representing 85.8% and 14.2% of the total respectively.

In 2009, 9 195 requests for reexamination were accepted, up 4.835 or 111%. As many as 6 697 requests for reexamination were concluded. 2 247 requests for invalidation were accepted, up 209 or 10%. As many as 2 310 requests for invalidation were concluded.

SIPO enhanced its capability in handling the application of three types of patents with a rapid growth of closed examination cases in 2009. 194 850 invention patents were examined substantively, a year on year increase of 32.7%; 262 648 utility model patents were examined, a year on year increase of 28.3%; 388 905 industrial design patents were examined, a remarkable increase of 80.1%.

The duration of patent examination granting, and reexamination invalidation remained steady. No patent applications were in pendency during the flow procedure. The duration of substantive examination for invention patent was 25.8 months. The duration of examination for utility model were shortened to 5.8 months and the said duration for industrial design were reduced even greater from 9.5 months to 5.5 months. The duration of reexamination invalidation was 7.4 months. The indexes about accuracy, consistency, and timeliness all reached historical peak.

In 2009, SIPO accepted 817 applications for registration of layout designs of integrated circuits, and 655 registrations were announced with certificates. Since the implementation of the Regulation on Protection of Layout Designs of Integrated Circuits on October 1st, 2001, SIPO had accepted a total of 3 368 applications for registration, and 2 957 registrations were announced with certificates.

In 2009, SIPO as the PCT receiving office, had totally received 8 000 international applications, a year on year increase of 31.6%. The international applications totaled 32 881 since 1994.

In 2009, Trademark Office (TMO) under the State Administration for Industry & Commerce of the People's Republic of China (SAIC) accelerated the trademark examination which exceeded one million. 2009 witnessed the historical number of trademark applications—over 800 000.

TMO accepted 830 447 trademark applications, a year on year increase of 18.96%, which overtook the historical record of 766 300 applications in 2006 by 64 200 and ranked first in the world in eight consecutive years. 1 414 736 trademark applications in total were examined, a year on year increase of 88.69%. That number equaled to the total volume of five years before the Office introduced accelerated examination. The duration of examination was 17 months. There were 39 436 applications for opposition, a year on year increase of 56.24%; 25 020 applications for opposition were closed, a year on year increase of 127.60%. By the end of 2009, China ranked first in the world with a total number of 3 404 534 valid registered trademarks.

In 2009, China accepted 13 267 territorial extension applications of Madrid international registration for trademarks from International Bureau of WIPO (one trademark covering multiple classes) and Chinese nationals filed 1 346 applications of Madrid international registration for trademarks through TMO (one trademark covering multiple classes). By the end of 2009, the International Bureau of WIPO remained 142 830 valid trademarks of Madrid international registration designating China for territorial extension (one trademark covering multiple classes), which made China the No.1 for five consecutive years. The International Bureau of WIPO accepted 9 721 applications of Madrid international registrations for trademarks (one trademark covering multiple classes) from Chinese enterprises through Trademark Office which made China rank top 10 in the world and top 1 in developing countries for five consecutive years.

In the meantime, TMO enhanced the registration and protection of trademark and geographical indication for agriculture produces. In 2009, TMO registered 142 000 agricultural product trademarks with the total number of 749 800 and 240 geographical indications with the total number of 771. In particular, the total number of registered geographical indications during the past two years was 1.56 times that from the past fifteen years. TMO also reviewed and approved 751 special symbols and 17 special symbols for extension, registered 3 official symbols, changed the recordation of 177 Olympic symbols from the Organizing Committee of the 29th Olympic Games to International Olympic Committee, and recorded 19 symbols for World Expo.

In 2009, TMO accepted 55 804 applications for trademark renewal, among which 58 731 were settled; 96 576 applications for trademark registration change, among which 106 058 were handled; 64 517 applications for trademark transfer, among which 66 808 were dealt with; 17 447 applications for recording of trademark licensing contract, among which 17 733 were finished.

In 2009, NCAC improved fundamental work delivered better public service, and significantly enhanced the efficiency in copyright registration and recording. In particular, the registration of computer software soared since the campaign of promoting copyrighted software initiated. In 2009, totally 70 965 pieces of various kinds of computer software were registered, up 49 75 % as compared with that of 2008. The total revenue from software sales, which were 480 billion Yuan in 2006, amounted to nearly 900 billion Yuan by the end of 2009. The registrations of software copyright totaled 67 912, a year on year increase of 48 6%, accounting for 95 7 % of the overall registered software or the volume of the year 2007 and 2008. Registrations of copyright transfer contract and exclusive licensing contract for software reached 182, a year on year increase of 26 38%; changes or addition of information to the existing registrations were 2 752, a year on year increase of 91 64%; registrations of pledging contract for computer software copyright was 119, a year on year increase of 9 17%.

In 2009, the recordation of customs IP protection by IP right holders at GAC remained fast growth. The GAC had examined and approved 3 002 applications for recordation in 2009, among which 731 were patent, 2 146 were trademark exclusive right, 125 were copyright. It was the first time for GAC to exceed 3 000 pieces of recordation within a year. Since the implementation of customs recordation on IP in 1995, GAC had totally examined and approved 19 038 IP recordation applications. In the mean time, IP Recordation Application System for Customs Protection was in the process of system upgrading.

In 2009, the Ministry of Agriculture (MOA) and State Forestry Administration (SFA) continued to promote the protection of new varieties of plants. MOA accepted 992 domestic and foreign applications for new varieties, which was an increase of 14% compared with 868 applications in 2008, and established a new record among those applications, 104 were from foreign applicants, an increase of 12% compared with the number in 2008. The annual applications ranked No.4 among the members of International Union for the Protection of New Varieties of Plants, after EU, U.S, and Japan. The examination and granting efficiency were significantly enhanced via improved examination and testing procedure for applications of new plant varieties. A total number of 1 119 new varieties of plants were granted, an increase of 145% from 2008. By the end of December 31st, 2009, the applications for new varieties of plants had reached accumulative total of 6 555, among which 3 407 were closed and 2 595 were granted. MOA also accepted and published 244 application for geographical indications registrations of agricultural produces and issued 185 certificates for the produces. By the end of 2009, SFA accepted 176 applications for new varieties of plants and granted 90 cases, representing 51% of the total applications.

### **III. A New Prospect Opened up in the IP Administrative Enforcement**

In 2009, Chinese IP administrative enforcement authorities opened up a new prospect in administrative protection of IPRs through strict enforcement according to laws and in line with their respective administrative functions.

In 2009, SIPO formulated and issued consecutively the Circular on the Arrangement of Recent

Enforcement Activities among Intellectual Property Offices across the Nation, the Action Plan of “Thunderstorm” and “Skynet” Special IP Enforcement Campaigns in 2009, and other documents, so as to carry out a unified deployment of the enforcement work and promote the implementation of various important enforcement activities.

The thorough implementation of “Thunderstorm”, “Skynet”, and other local IP enforcement campaigns greatly contained group infringement, repeated infringement, and patent fraud activities, improved the effectiveness of IP enforcement and protection in large exhibitions, frightened IP violators, and heightened the confidence of right owners, innovators, and consumers, which played an important role in creating a sound environment for innovation and development.

In 2009, local IP administrations across the country received a total of 937 patent disputes concerning infringement and 26 of other types. 30 cases related to counterfeiting patents and 548 cases regarding passing off patents were investigated and dealt with. In those actions, 13 240 person times of enforcement officials were dispatched; 6 013 business premises were inspected; and 1 322 521 pieces of goods were checked; a total of 9 cases were transferred to public security departments and 9 cases from other authorities were received; 533 trans department joint enforcement actions were organized and 204 cross region enforcement actions were launched.

In 2009, the Administrations for Industry and Commerce (AICs) at all levels across China investigated 51 044 cases of trademark violations, among which 7 448 were general violations of trademark, and 43 596 were related to trademark infringement and counterfeiting, 10 461 foreign related trademark cases were investigated and handled. The AICs seized and removed 13.534 million illegal trademark labels, handed over 92 cases and 109 suspects to judicial authorities for suspected trademark criminal violations.

SAIC attached great importance to the overseas IP protection for Chinese enterprises. SAIC appropriately handled some cases regarding malicious registration of Chinese trademarks abroad through diplomatic efforts.

In 2009, the copyright administrations at all levels strengthened the supervision on some influential internet companies and websites in various regions during the Fifth National Special Campaigns of Combating Internet Infringement and Piracy. The copyright administrations effectively regulated the internet copyright order on through appointed meetings, real time monitor, on site inspection, signing liability documents, and other measures. Authorities in charge of copyright, public security, and telecommunications continued their cooperative mechanism on internet copyright protection by severely cracking down the dissemination of pirated videos, literature works, and games on the internet. Authorities across the country handled 541 internet infringement cases, shut down 362 illegal websites, imposed a total fine of 1.28 million Yuan, confiscated 154 servers, and transferred 24 cases to judicial authorities for suspected criminal violations. During the special campaigns, local authorities severely punished the websites containing pornographic, piracy and other illegal contents, and over 40 illegal

website containing those information were investigated and prosecuted, accounting for 12% of the total number of closed websites. The “Tomato Garden” software piracy case, which was investigated under the initiation of a copyright administration and transferred to judicial authorities later, was the first successful criminal case in cracking down large scale internet piracy activities in China and received positive feedback from both China and overseas regions, It greatly deterred pirated activities on the internet.

NCAC together with the National Anti Piracy and Pornography Office, the Ministry of Culture, and the Ministry of Education promulgated the Circular on Strengthening the Copyright Protection Work in Libraries to improve the copyright administration and protection in libraries in China.

Facing the continuous increase of supervising business, cases concerning infringing cargoes during import and export uncovered by the customs across the country increased rapidly under the condition of limited human and material resources through reasonably reallocating enforcement resources and fully exploiting risk management theories. In 2009, the customs across the country organized a total of 67 051 actions of IPR protection, actually detained 65 810 batches of cargoes suspicious of infringement, increased by 4.1 times and 4.9 times comparing with the year of 2008 respectively, with a total value of 450 million Yuan and 280 million pieces of goods. Under the unified arrangement by GAC, the customs nationwide carried out special enforcement campaigns with clear targets and improved enforcement efficiency. From June to December, 2009, GAC initiated the special IP protection action against infringement activities through mailing and express mail system across the country, which lasted 7 months. Considering that large volume of infringing goods exported abroad through the mailing and express mail system, the supervising authorities took effective measures to strengthen the actual monitor of goods mailed or express mailed abroad, especially of those mailed to high risk countries and regions, by raising their inspection ratio, realizing 100% computerized machine check when the condition permitted, and simplifying the procedure of detaining infringing mailbags and express mails, and their investigation and prosecution process. During the period of the special actions, customs across China seized 37 918 batches of infringing goods, with a total value of 61 662 700 Yuan and 2 612 900 pieces involved, through the mailing and express mail system. Meanwhile, the customs at various levels took all kinds of measures to enhance the protection over the IPRs independently owned by domestic enterprises, such as the “Spring Wind” special campaign organized by the Gongbei Customs in self dependent IP protection and some other special campaigns.

The Ministry of Culture successively issued the Circular of Carrying out Rectification Actions towards the Culture Market, the Circular of Organizing Special Rectification Actions towards the Culture Market During the New Year and Spring Festival Period in 2010, the Circular of Improving and Strengthening the Examination of Music Contents on the Internet, the Circular of Strengthening the Administration on Internet Games and Fictitious Money, and other documents, through which special actions were carried out to purify the social and culture environment, rectify the cartoon market, crack down illegal music providers on the internet, and regulate the fictitious monetary market of internet games. IP protection was regarded as one of the important parts in

the above special actions, which enhanced the fight against various infringement and piracy activities.

In 2009, culture administrations and general enforcement authorities of culture market in the whole country dispatched a total of 8 419 363 person times of enforcement officials, ordered 297 360 businesses to rectify their wrong doings, received 62 805 reports, initiated 72 857 investigations, transferred 3 692 cases to other authorities, finished 65 049 cases, warned 179 923 businesses, imposed a total fine of 182 570 000 Yuan, shut down 37 731 businesses to rectify their wrong doings, withdrew 6 632 license permits, confiscated 2 317 623 Yuan of illegal income, and seized a total of 52 382 645 pieces of illegal machines, tools and other goods.

MOA enhanced cracking down of infringement activities of plant varieties through emphasizing the supervision of important cases. MOA made innovation on the administrative enforcement methods regarding protection of new varieties, strengthened the supervision of seed production bases, and prevented infringement and counterfeiting activities from the source. MOA strengthened protection of important varieties, directed the Bureau of Agriculture of Gansu Province to investigate infringement activities and carry out enforcement activities in seed production bases to protect the new variety of "Zhengdan 958" Corn, which had been promoted to the whole country. All agriculture authorities took active actions to investigate more than 20 cases infringing new varieties of rice, broccoli and other agriculture products.

#### **IV. A New Stage Entered in the Judicial Protection of IPRs**

In 2009, people's courts at all levels across China strengthened judicial protection of IPRs and made new achievements in trial of IPR cases with a strong sense of responsibility.

The number of IPR civil cases continued its rapid increase. In 2009, courts at various levels received 30 626 first instance IPR civil cases and concluded 30 509 ones, up 25 49% and 29 73% respectively. Among them, there were 4 422 patent cases, up 8 54%; 6 906 trademark cases, up 10 80%; 15 302 copyright cases, up 39 73%; 747 technology contract cases, up 19 9%; 1 282 unfair competition cases, up 8 19%; 1 967 other types of IPR cases, up 46 79%. The courts concluded 1 361 first instance IPR civil cases involving foreign parties, up 19 49%; 353 first instance IPR civil cases involving parties from Hong Kong, Macao and Taiwan, up 56 89%.

In 2009, SPC received 243 IPR civil cases and concluded 336 ones, among which 176 second instance IPR civil cases were received and 263 were concluded.

The quality and efficiency regarding the trial of IPR civil cases were continuously improved. The rate of first instance IPR civil cases handled and concluded by local courts across China increased from 81 73% in 2008 to 85 04% in 2009. The rate of appeal dropped from 49 32% in 2008 to 48 82% in 2009, while the rate of retrial dropped from 0 44% in 2008 to 0 33% in 2009. Mediation of IPR lawsuits achieved great results. In 2009, the



average withdrawing rate of first instance IPR civil cases through mediation by local courts reached 61.08%, up 5.22% comparing with the year of 2008. The rate of cases concluded by the IP tribunal of the Supreme People's Court increased from 55.93% in 2008 to 88.64% in 2009, up 32.71%.

In terms of criminal justice protection of IPRs, courts enhanced protection against criminal violations of IPRs and severely cracked down all kinds of IPR criminal activities. In 2009, local courts concluded 3,660 IPR criminal cases, up 10.04% comparing with the year of 2008, and sentenced 5,836 suspects, up 8.31%, 5,832 of which were found guilty, up 8.28%. Among the cases concluded, 1,007 were sentenced on the account of criminal violation of IPRs, among which 1,605 suspects were found guilty, up 1.1% and down 3.14% respectively; 646 cases were sentenced on the account of manufacture and distribution of goods with inferior quality (involving IPR violation), among which 1,114 suspects were found guilty; 1,973 cases were sentenced on the account of illegal business operation (involving IPR violation), among which 3,076 suspects were found guilty; 34 cases were sentenced on the account of other crimes (involving IPR violation), among which 41 suspects were found guilty.

Courts also upheld its duty of trial of administrative cases, supervised and supported the enforcement carried out by administrative authorities according to the law. In 2009, local courts received 2,072 first instance IPR administrative cases and concluded 1,971 ones, up 92.92% and 90.99% respectively. Among them, there were 688 patent cases, up 19.03%; 1,376 trademark cases, up 184.3%; 4 copyright cases, down 42.86%; and 4 other types of cases.

In 2009, SPC accepted 54 and concluded 56 IPR administrative cases.

In 2009, the procuratorate organs took effective measures to enhance IPR protection. First, the procuratorate organs fulfilled the function of approval of arrest and prosecution according to the law and fight against IP criminal violations. In 2009, the procuratorate organs nationwide accepted 1,492 arrest approval applications related to IP criminal cases with 2,667 suspects involved in, up 6.0% and 3.9% respectively, comparing with 1,407 applications in which 2,565 suspects were involved in 2008; and approved arrest of 2,119 suspects in 1,256 cases, up 0.5% and 3.8% respectively, comparing with 2,107 suspects involved in 1,210 cases in 2008. In 2009, the procuratorate organs nationwide accepted 1,931 prosecution applications related to IP criminal cases transferred by other administrative authorities with 3,518 suspects involved in, up 9.0% and 1.0% respectively, comparing with 1,770 applications in which 3,482 suspects were involved in 2008, and prosecuted 2,695 suspects in 1,535 cases, down 0.07% and up 7.1% respectively, comparing with 2,697 suspects involved in 1,432 cases in 2008. Second, the procuratorate organs gave a full play of legal supervision so as to correct some ineffective enforcement actions in combating IPR criminal violations. The procuratorate organs strengthened the examination on the copies of Decisions on Administrative Punishment related to IPR cases transferred by administrative enforcement authorities, gave suggestions on transferring cases related to IPR criminal violations to public security departments on time, and supervised public security departments during case investigation. The procuratorate organs paid

attention to finding the clues of duty crime in malfeasance of government employees relating to IPR criminal crime and seriously prosecuted those suspicious criminals according to laws. In 2009, the procuratorate organs across the country supervised 22 cases related to IPR criminal violations investigated by public security departments. The procuratorate organs investigated 85 cases for engaging in duty crime for personal gains by not transferring criminal cases with 119 suspects involved in.

The public security departments severely combated IPR crimes and achieved good social and legal effects. In 2009, public security departments nationwide uncovered 1 624 IPR criminal cases involved 1.038 billion Yuan and arrested 2 649 criminal suspects. Some other IPR criminal cases were sentenced and punished on the account of manufacture and distribution of fake or inferior quality goods and illegal business operation. The Ministry of Public Security kept high pressure on combating IPR infringement crimes, selected some important cases for whole process supervision and coordination under the investigation guidance of “searching for hidden places of criminals, destroying their network, and arresting heads of crimes”, and successfully cracked down some long existing criminal groups and organizations in making and selling counterfeits in various regions, so as to further promote the development of combating IPR crimes. The public security departments positively supported the special enforcement campaigns, such as “Eagle Eye No. 2 Action”, in protecting IPRs related to “the World Expo 2010” and “the National Game”, carried out by the public security departments in Shanghai and Shandong, enhanced prevention and fight against infringement of marks for “the National Game” and “the World Expo”, selling counterfeited and pirated goods at streets, and other crimes, and successfully uncovered a batch of important cases, such as the case of counterfeited sculptures of “the World Expo” mascot “HaiBao”, so as to positively maintain China’s international image. The public security departments carried out joint enforcement actions in key areas together with other related agencies. In the “special rectification campaign to crack down network infringement and piracy” jointly carried out with the National Copyright Administration and the Ministry of Industry and Information Technology, a batch of important cases were uncovered and a group of illegal websites were shut down, so as to push the anti piracy activities on the internet to a new height.

## **V. New Achievements Made in the Construction of IP Enforcement Mechanism**

In 2009, the IPR related agencies made new achievements by strengthening coordination, improving administration, and continuously promoting mechanism construction.

In 2009, SIPO further strengthened communication and cooperation with related agencies and continuously improved the trans agency enforcement cooperation mechanism. SIPO, jointly with 28 member agencies under the trans ministerial joint meeting mechanism for implementing the national intellectual property strategy, issued the China’s Action Plan on Intellectual Property Protection 2009; SIPO, jointly with 8 agencies such as the Ministry of Commerce, issued the Circular on Strengthening IPR Protection Work in Organizing Businesses to Attend Overseas Exhibitions; SIPO, jointly with 8 agencies such as the Ministry of Public Security (MPS), GAC, SAIC, NCAC, issued the Circular on Organizing Special Campaigns for

IPR Protection in the 2010 World Expo, to further strengthen the IPR protection for the World Expo through such special campaigns; SIPO, cooperated with 10 agencies including MPS and local government departments, organized the Seminar on IPR Enforcement Experiences Exchange and made in depth discussions on the IPR enforcement in China.

The IPR assistance service telephone line “12330” was put through on April 26th, 2009. Local IP protection and assistance centers carried out their work in an effective order and continuously expanded their influence. By the end of 2009, a total of 61 IPR assistance centers were approved to be established.

SIPO initiated the “5-26” project and the establishment of the national patent protection liaison system so as to promote the enforcement capability building of the IP offices across the country and improve their enforcement skills. In 2009, a total of 41 local IP offices were included in the “5-26” project and 26 units were listed as the important national patent protection liaison bases.

In 2009, NCAC promoted the use of legal software in enterprises and made successful achievements. The rate of using legal software in large scale enterprises increased obviously. A total of 10 399 enterprises in two groups have been included in the annual checking plan of using legal software, among which 9 254 enterprises finished self check and correction, and almost all the enterprises under inspection have accomplished the target of using legal software. NCAC completed the selection of the second group of “the National Model Units for Using Legal Software”, and selected 254 model units, increased by 52% comparing with the number of the first group.

NCAC promulgated the Administration Measures on Establishing Copyright Protection Model Cities, Science Parks, and Units, forcefully promoted copyright protection demonstration work, gave a full play of the guidance effect of demonstration units, so as to promote the development of copyright industry. NCAC approved to establish the Chinese Film Copyright Association, setting up a comparatively complete copyright collective management framework consisting of music, audio video products, literature, photography, film and etc., further improved the collective management system, and promoted the orderly dissemination of copyrighted works.

GAC and MPS continued to implement the Provisional Regulations on Strengthening IPR Enforcement Cooperation jointly issued in March 2006 to deepen the trans agency enforcement cooperation. In October 2009, GAC and MPS co organized the seminar on strengthening IPR Criminal Enforcement Cooperation. Participants, including right owners discussed many issues such as how to strengthen the linkages between IP administrative and criminal enforcement and decided to further enhance coordination and cooperation to form the joint force in combating infringement activities.

MOA continued to carry out enforcement pilot work regarding new varieties of agricultural plants in 22 provinces (autonomous regions and municipalities) such as Shandong and enhanced enforcement strength. By exploring the mechanism of trans regional enforcement and

cooperation in dealing with important cases, the Ministry of Agriculture established cooperation mechanism with administrations for industry and commerce, public security departments, IP offices, and judicial departments to jointly combat illegal activities violating new plant varieties, safeguarded the market order on seeds, and protected the legal rights of new plant variety holders and the interests of farmers.

SFA established Enforcement Administration Division to carry out specific administrative enforcement work in order to strengthen the administrative enforcement on the protection of new varieties of plants.

In 2009, MPS continued to deepen the cooperation with IP administrative enforcement agencies, such as SIPO, SAIC, GAC, NCAC , and paid special attention to exchanging information on providing expert opinions and guidance on important cases. MPS encouraged local public security bureaus to actively strengthen communications with enterprises, provide infringement pre warning services, and collect and master criminal clues. MPS coordinated with public security bureaus in local provinces, such as Zhejiang, Guizhou, Sichuan provinces to promote the “Five Measures to Serve Enterprises”, the “Liaison Mechanism with Important Enterprises on IP Criminal Protection” and other measures, to understand the difficulties of enterprises in IPR protection and provide assistance to them, which received support and praise from enterprises.

In 2009, the IPR trial system and working mechanism of people’s courts were further developed and improved. The problem of work division in the trial of patent, trademark and other authorization and ownership determination cases was successfully solved. The Judicial Committee of SPC discussed and adopted the Provisions of the Supreme People’s Court on the Work Division in the Trial of Administrative Intellectual Property Cases Involving Patent, Trademark and Other Authorization and Ownership Determination Issues on June 22, 2009. The Provisions authorized the power to hear the administrative intellectual property cases involving patent, trademark, layout designs of integrated circuits, new varieties of plants and other authorization and ownership determination issues for the first or second instance or review, to the intellectual property tribunals of the relevant intermediate people’s court of Beijing, the Higher People’s Court of Beijing and SPC, concluding the history of such cases respectively handled by the IP tribunals and administrative tribunals of relevant courts since 2002.

In 2009, the pilot work of unifying the trial of IP civil, administrative and criminal cases under the IP tribunals (three types of IPR cases under one tribunal) was further carried out. SPC made special research on the pilot of unifying the three types of IPR cases under one tribunal. By the end of December 2009, 5 higher people’s courts, 44 intermediate people’s courts, and 29 primary people’s courts had carried out such pilots.

In 2009, SPC continued to strictly control the newly added number of intermediate courts with patent jurisdiction under the judicial designation system of technical cases. Meanwhile, SPC added some designated primary courts to have the jurisdiction over general IPR cases, promoted trans regional jurisdiction work according to the local needs, and further improved the

jurisdiction system on IP trials. By the end of 2009, the number of intermediate courts with jurisdiction over the authorization and ownership determination on patent, new varieties of plants, layout designs of integrated circuits, and well known trademarks had reached 75, 41, 46, and 41 respectively, and the number of primary courts with jurisdiction over general IPR civil cases had reached 92.

In 2009, to further enhance the fight against IPR criminal violations, procuratorate organs actively promoted the linkages between administrative and criminal enforcement, especially the establishment of the “network linking and information sharing” mechanism among regions by fully taking advantage of high technologies. Through the efforts of procuratorial organs and related agencies, the “network linking and information sharing” mechanism made great achievements, effectively promoted the criminal judicial protection of IPRs, prevented the phenomenon of “criminal punishment replaced by fines” in the IPR protection.

## **VI. IP Publicity Reached to a Higher Level**

2009 witnessed the effective publicity and the development of favorable climate for IP protection by IP departments which centered on key programs and take advantage of important events like “World IP Day” with innovative measures and forms.

Focusing on the primary tasks like implementing national IP strategy and cultivating IP culture, SIPO elaborately organizes and launched a series of publicity programs.

Collaborating with 24 ministries and administrations, SIPO led the 2009 National IPR Publicity Week themed with “Culture, Strategy, Development” shortly before the World IP Day. Moreover, SIPO along with SAIC, NCAC held the 2008 Press Conference on IP Protection in China. In addition, SIPO, MPS, and GAC jointly held the China High level Forum on Intellectual Property with the theme of Challenge, Cooperation, Development and had its fourth Open Day to the public with the theme of “Approaching IP”.

Centering on the 60th anniversary of P.R.China and the 1st anniversary of the release of the Outline of the National Intellectual Property Strategy, SIPO launched a series of focused publicity activities: inviting central and local mainstream media to report key events like the 3rd China Patent Week, 2nd Forum on IP and City Development, and IP Protection Symposium of Foreign Invested Enterprises; blueprinting the theme interview of “IP and Future Competition” and the filming of series of IP TV program Dangerous Shortcomings with CCTV which received favorable public feedback; compiling 100 Influential IP Cases in China and Historical Decision And Great Practice—Commemorative Essay Collection of 30th Anniversary of SIPO.

SAIC launched extensive publicity activities to raise the public awareness of trademark strategy in line with the implementation of trademark strategy. In 2009, it hosted and participated in a series of publicity activities for trademark strategy like the National IPR Publicity Week, National Trademark Strategy Meeting for Industry and Commerce Administrations Nationwide, China Well known Trademark Show, Symposium on 20th Anniversary of China’s Entry into

Madrid International Trademark Registration System. From November 9–11, 2009, SAIC hosted the 3rd China Trademark Festival with the theme of “implement trademark strategy for the development of innovative country”. Over 3,000 representatives and scholars from international and Chinese IP protection departments, agencies, and businesses that owned well-known and famous trademarks participated in various events during the festival. It also compiled the first Annual Development Report on China’s Trademark Strategy (2008), released the 2008 Typical Transferred Cases of the Protection of Exclusive Right of Registered Trademark and the 2008 Classic Cases of the Suspected Counterfeiting Registered Trademark which provided crucial information and data for the implementation of Trademark Strategy.

NCAC was devoted to the higher level of publicity via the National IPR Publicity Week and key festivals and events. During the Week, NCAC and CCTV jointly held a TV program themed as “Copyright in daily life, copyright creates fortune”. To further promote the public awareness of copyright, NCAC also launched a series of programs with other departments—“Green Bookmark Campaign 2009—Say No To Piracy, Starts From Me” with the National Eliminate Pornography and Illegal Publication Office and CCTV; the National Youth Reading Campaign on Copyright Protection and Copyright Protection Knowledge Contest to raise awareness of refusing piracy among the youth; NCAC established copyright publicity helpdesk at Beijing International Book Fair and 61st Frankfurt Book Fair held an array of shows that displayed the achievements in copyright protection in China like “Copyright Protection in China” and “Copyright Witnesses History” at International Book Fair and 2nd International Copyright Trading Exhibition. It also compiled the first Yearbook of China Copyright which systematically introduced the development of Chinese modern copyright system.

Customs at all levels launched IPR protection publicity programs based on current economic climate and the functions of its branches. During the April 26 National IPR Publicity Week in 2009, the Customs focused on introducing relevant laws and regulations concerning IP protection and answered questions from right holders and the public, which facilitated their understanding of the amended Implementing Measures for Regulations on Customs Protection of Intellectual Property Rights. The Customs published the white paper—Intellectual Property Protection by Chinese Customs in 2008, and selected and publicized Top 10 IP Protection Cases by Chinese Customs in 2008. The public warmly recognized these achievements.

MOA launched a series of publicity programs—the 3rd National Agricultural Forum on Intellectual Property, active dissemination of agricultural IP knowledge via TV, radio, newspaper, magazine, website so as to give full play of guidance role of publicity, provision of agricultural IP knowledge for better awareness and recognition of agricultural IP and favorable climate for innovation.

On April 23, 2009, MOA, SFA, and SIPO jointly launched a series of celebrations in Beijing, which featured the implementation of Regulations of the People’s Republic of China on the Protection of New Varieties of Plants, 10th anniversary of China’s entry into International Union For The Protection Of New Varieties Of Plants, and international symposium on protection of new varieties of plants. Also, some model institutions and individuals were honored, which created a

favorable environment for the protection of new varieties of plants.

SFA held the theme exhibition for the protection of new varieties of plants on the 7th National Floriculture Exposition to publicize the protection and enhance the public awareness of protecting new varieties of plants via introduction of laws and regulations, exhibition of accredited plants, broadcasting of videos and audios.

MPS had been treating the publicity as the leading and basic measure and implemented various programs and forms in publicity. Collaborating with SIPO, the MPS held the China High level Forum on Intellectual Property and delivered the impressive slogan of “The public as the main force act to stop counterfeiting and piracy” which draw extensive attention. It also issued the circular jointly drafted with SIPO and other departments to require local departments of public security to take initiative in organizing and leading local publicity work. During the Spring Festival and the National IPR Publicity Week, local departments of public security held face to face discussions and information exchange, so as to disseminate IP related laws and policies as well as unveil damages caused by counterfeiting and infringement.

SPC took full advantage of the typical judicial precedents to demonstrate and guide the IP cases. During the National IPR Publicity Week, SPC published 10 influential cases in judicial IP protection in China in 2008 as well as 50 typical cases and the first Annual Report on IP Cases by the Supreme People’s Court (2008). In addition, it conducted special investigation about web copyright, compensation for infringed audio and video products, and anti monopoly civil litigation

On April 9, SPC issued the Notice on Annual National Campaign in IP Trial among People’s Courts at All Levels for Creating Favorable Judicial Climate of Self innovation and organized relevant activities To effectively implement the national IP strategy and play the leading role in judicial protection for IP, local people’s courts set down stage by stage implementation measures. They made important achievements in the following fields—good settlement of patent cases cultivating innovation capability in science and technology and expanding innovation scope; preserving the credit of trademarks and promote the growth of independent brands; improving the trade and investment environment to further enhance the opening up.

The Supreme People’s Procuratorate of the People’s Republic of China attached great importance to the publicity of combating IP crimes. Several special reports were published on Procuratorate Daily, [www.jcrb.com](http://www.jcrb.com), and other media to introduce the implementation of Outline of the National Intellectual Property Strategy by procuratorate departments, like Systematic Integration of Administrative Enforcement and Criminal Justice and Extension of Supervision Scope of Criminal Case Establishment. These essays also publicized the effectiveness of cracking down on IP infringements, IP protection, and typical cases by procuratorate departments.

## **VII. IP Training Showed New Outlook**

In 2009, IP training developed further and professional development took new shape.

SIPO continued to advance the BaiQianWan IP Talents Program for the development of IP professionals with high quality. SIPO also collaborated with local governments, universities and institutions to develop IP training modes, integrated resources, and establish IP professional training bases. It conducted the compiling of 12 Five Year Plan for IP talents and formulated the working plan of establishing IP talents pool to promote IP talents cultivation.

Centering on the implementation of IP strategy, local IP administrations delivered over 3,000 industry and business oriented training programs for more than 600,000 trainees, which enhanced the creation, management, exploitation, and protection of IP by businesses and public institutions.

SAIC intensified the training for trademark strategy. It established the Training Program for Heads of Local Administration for Industry and Commerce in Trademark Strategy and delivered a series of training for the heads above municipal level in trademark strategy. In November 2009, SAIC held training workshop for trademark strategy and symbols protection in World Expo in Shanghai for over 240 trainees from local administrations. That was the largest training session ever held by administration for industry and commerce and the constructive experiment which integrated trademark strategy and symbols protection in World Expo.

NCAC made breakthroughs in training Party and administrative leaders, copyright enforcement officials, and managers for copyright affairs. NCAC and the Organization Department of the CPC Central Committee jointly held Workshop on National Copyright Affairs to train the local officials in charge of copyright affairs. To enhance the confidence and capability of local copyright enforcement officials, it held 3 workshops in Shandong, Jiangxi, and Inner Mongolia. In June and September of 2009, the Office of Inter agency Meeting for Applying Legal Software in Business together with State owned Assets Supervision and Administration Commission of the State Council held training workshops in Shenzhen and Beijing for nearly 800 relevant professionals in central state owned enterprises to promote the application of legal software in the businesses.

GAC emphasized its capability development. It trained experts for IP protection in the Customs via theoretical study and holding seminars. It provided relevant trainings to front line officials by means of hosting enforcement training seminars on special IP protection campaigns in the channel of post and express mail and Sino France customs IP protection workshop, so as to increase enforcement capabilities and facilitate the professional development of IP protection by the Customs.

MPS intensified the professional training to foster the team building in expertise. In May 2009, it compiled and published Selection of Economic Criminal Cases III—IP Infringements to introduce the investigation procedures and evidence requirements in dealing with criminal cases infringing IP rights for front line officials and inspectors. This book provided effective guidance and assistance to local enforcement practices and standardization building. In July 2009, it held



training seminar on IP criminal enforcement for public security agencies nationwide which invited experts and scholars from central departments, science and research institutions and enforcement agencies from abroad to systematically introduce the interpretation and application of existing laws, identification and determination of counterfeit trademarks, investigation and leadership in criminal IP infringements for 130 police officers from departments of economic investigation, public security, and cyber security in provincial and municipal public security bureaus.

SPC highly valued the cultivation of IP judges and intensified training on their expertise and trial techniques. Since 2009, it revised and supplemented the professional training contents for IP trial with focus on the training for IP judges in intermediate and primary courts. In August 2009, it held a national workshop for 240 IP judges from intermediate and primary courts which aimed to address the new issues in IP trials in National Judge Institute.

The Supreme People's Procuratorate intensified the training for settlement of IP criminal cases. In April 2009, it held IP workshop and on the spot experience exchange meeting in integrating administrative enforcement and criminal justice in Jiangsu Province. Relevant officials from MPS, GAC, and Ministry of Commerce as well as experts and scholars were invited to introduce the trends in IP infringements and the problem and countermeasures in handling IP cases. In addition, some procuratorate departments were invited to exchange experience in establishing the mechanism of "integrating web and sharing information" as well as integrating administrative enforcement and criminal justice, especially transferring suspected IP infringement cases, which contributed to the crackdown on IP infringements and integration of administrative enforcement and criminal justice. In June 2009, it held the first training session for officials and invited SIPO leaders to make speech on national IP strategy.

### **VIII. New Development Scored in the International IP Exchange and Cooperation**

In 2009, the international cooperation in the IP field made new developments by further improving the multilateral and bilateral cooperation mechanisms, expanding the cooperation means and scope, and increasing the cooperation level.

SIPO continued to coordinate and organize relevant agencies to actively participate in the negotiation and discussion of international intellectual property affairs, deepened the cooperation in the IP field with international organizations such as the World Intellectual Property Organization (WIPO), and other countries and regions, and promoted the overall development of international cooperation in the IP field.

In March, Mr. Francis Gurry, Director General of WIPO, attended the WIPO Trans-Regional Intellectual Property High Level Forum and the WIPO Informal Roundtable Meeting co-organized by SIPO, SAIC, and NCAC. Vice Premier Wang Qishan attended the opening ceremony, and Premier Wen Jiabao met Mr. Gurry and his delegation and made keynotes on IP issues. Mr. Tian Lipu, Commissioner of SIPO, held formal meeting with Mr. Gurry and reached agreement on some important cooperation issues such as co-organizing the China Patent

Golden Award, the Advanced Patent Cooperation Treaty Roving Seminar, and the World Expo.

In June, under the joint efforts made by SIPO, SAIC, NCAC and the Permanent Commission in Geneva, Madam Wang Binying, the candidate nominated by the Chinese government, was successfully elected as Deputy Direct General of the WIPO at the 60th session of WIPO Coordination Committee.

On October 25th, Commissioner Tian Lipu signed the Memorandum of Understanding between China and ASEAN on Cooperation in the Field of Intellectual Property representing the Chinese government, while Premier Wen Jiabao and leaders from ASEAN member countries attended the signing ceremony.

In 2009, SAIC actively carried out a series of bilateral and multilateral exchange and cooperation programs in the trademark field. SAIC dispatched participants to join several bilateral and multilateral meetings, strengthened exchange and cooperation with trademark offices of the United States, Japan, Europe, and other countries, signed cooperation memorandum with trademark competent authorities of many countries and regions such as EU, Korea, France, Japan, Viet Nam and etc. It attended the 28th APEC IP expert group meeting held in Singapore, participated in the 131st annual meeting of the International Trademark Association and the trademark seminar between China and Canada, held the 7th Head Meeting between the Chinese and Japanese Trademark Offices in Beijing, continued to promote the Sino EU Second Phase IP Cooperation Program, and organized the comparative study on the registration of trademarks between China and Europe.

From November 30th to December 1st, 2009, SAIC and the WIPO jointly organized seminar on geographical indications in APEC areas in Chongqing, for the purpose of exchanging and exploiting experiences and practices in utilizing geographical indications to promote economic development in rural areas. Over 200 representatives and experts from WIPO, international organizations and trademark authorities of Thailand and South Africa, and relevant Chinese departments attended the meeting. During the seminar, other events such as Achievements Exhibition on Trademark and Geographical Indications of Agricultural Products in China were also held.

In 2009, NCAC carried out international exchange and cooperation in line with the opening up policy and expansion of foreign trade relationship. NCAC dealt with the copyright issues at WTO appropriately, cooperated with relevant agencies to deal with the WTO IPR dispute raised by the United States, and successfully accomplished the preparation work for the WTO 8th transitional review and the biennial policy review on China. NCAC actively expanded cooperation field with the WIPO and expressed the stance of the Chinese government on various important issues such as folklore, intellectual property and development, copyright and related rights. To promote the bilateral and multilateral copyright cooperation, NCAC actively coped with the challenges of copyright protection under the APEC framework. By actively participating in the Sino US strategic and economic dialogue and Sino EU intellectual property dialogue, NCAC appropriately handled the Sino US, Sino EU, and Sino Japan copyright bilateral

relationship. NCAC actively participated in the Sino-Norway and Sino-Costa Rica free trade area negotiation, joined the IPR working group meeting under the Sino-Brazil-Sino-Russia Economic and Trade Committee, and strengthened the cooperation with ASEAN countries in the field of copyright.

GAC continued to promote the cooperation with customs in other countries and regions in IP enforcement information exchange, enforcement training, and exchange of enforcement experiences and personnel. In January, 2009, during Premier Wen Jiabao's visit to the EU headquarter, the Action Plan on Strengthening IPR Protection between China and EU Customs was smoothly signed. Both sides established IPR working groups and expert groups to carry out enforcement cooperation systematically. In addition, GAC continued to implement the Memorandum on Strengthening IP Border Enforcement Cooperation signed with the US custom, enhanced cooperation with Japanese and Korean customs under the framework of the Zero Counterfeit Plan, and accumulated rich experiences in information and trend analysis and assistance in case investigation.

In 2009, MOA organized a training course on the protection of new varieties of plants for the 10 members states of ASEAN, actively participated in a series of meetings held by the International Union for the Protection of New Varieties of Plants (UPOV) and the formulation of related international rules, finished the research and preparation on the test guidance on millet and other agricultural plants authorized by the UPOV, and successfully organized the 43rd UPOV Vegetable Technical Working Group Meeting, the Sino-Germany International Symposium on the Protection of New Varieties of Plants, through which China's role in the international protection of new varieties of plants was enhanced.

In April, 2009, MOA, SFA, and SIPO co-organized the Second Meeting of the East Asia Forum on the Protection of New Varieties of Plants and the International Symposium on the Protection of New Varieties of Plants, in which representatives from many countries, relevant international organizations, research institutes and enterprises participated.

In 2009, MPS took a full advantage of the IPR cooperation carried out by China and EU, actively participated in the Sino-EU IPR cooperation programs and formulated the specific plans to implement the cooperation programs, and made substantial achievements in enforcement exchange, training, and other areas. MPS successively cooperated with the U.S. Department of Homeland Security, Federal Bureau of Investigation, the UK Serious Organized Crime Agency, the French Ministry of Civil Affairs, and other foreign enforcement agencies in assisting investigation and obtaining evidences, informing criminal clues, and providing judicial assistance in handling the "Summer Solstice Case" and some other cases. MPS joined and organized many overseas visits under the bilateral framework such as the Sino-US and the Sino-Brazil business and trade committees, the Sino-US joint enforcement liaison group, the Sino-EU and the Sino-Japan IPR working group, and the Sino-UK annual enforcement meeting, and the multilateral framework such as the cooperation with the World Police Organization, received visits from foreign government departments and enforcement agencies and joined their meetings. During the foreign exchange, MPS introduced the achievements in IP protection made

by the public security departments.

In 2009, SPC held an international seminar on IP judicial protection and other symposiums, organized a study group to visit the United Kingdom, Belgium, Germany and Luxemburg on the EU competition law, and co-hosted the seminar on the Sino-US anti-monopoly civil litigation issues with the U.S. Federal Trade Committee. Such activities further enhanced the theoretical study on IPR trials and effectively promoted the unification and specification of judging criteria.

The Supreme People's Procuratorate paid attention to strengthening cooperation with IPR international organizations and related countries, which actively supported the foreign related IP negotiations. In 2009, the SPP dispatched representatives to join the Sino-EU, Sino-Swiss, Sino-Brazil, and Sino-Japan IP working groups, the Sino-US Business and Trade Committee, the WTO review on China's trade policies, the transitional review of WTO TRIPs council on China and the report on China's trade policy, actively participated in the Sino-EU IP Cooperation Program(Phase II), and organized a delegation consisted of directors from the investigation and supervision bureaus of the Supreme People's Procuratorate and local procuratorate agencies to pay a study visit to Germany, the Netherland, and Denmark on IP protection at the invitation of European Patent Office.