Foreword

On 1 July 1997, China resumed sovereignty over Hong Kong under the 'one country, two systems' framework. Although voluminous literature on the transition of this former British colony exists, very few books or journal articles have examined the parallel intellectual property developments in these two jurisdictions. This volume is therefore a delight to read. It is also very timely in light of the twentieth anniversary of Hong Kong's handover.

This book brings together policy makers, legal practitioners and academic commentators to discuss a wide range of patent issues, including innovation models, patent system designs, green technology, traditional Chinese medicines, telecommunications equipment and services, and enforcement of FRAND licences. The chapters draw on the contributors' expertise and experience in intellectual property law and policy in mainland China, Hong Kong and often both. Although the topics vary from chapter to chapter, all the chapters centre around three important sets of stories, the study of which will greatly enhance our understanding of intellectual property developments in China.

The first set of stories concerns transformation and transition. Since its promulgation in 1984, the Chinese Patent Law has been revised three times in 1992, 2000 and 2008, respectively. These amendments responded to both the rapidly changing internal conditions and the continued external pressure from the United States and other developed countries, especially before China joined the World Trade Organization (WTO) in December 2001. In the mid- to late 2000s, China has also undergone a dramatic transformation from an imitation economy to one relying on innovation – a phenomenon that is well captured by the editor's earlier monograph, *Imitation to Innovation in China: The Role of Patents in Biotechnology and Pharmaceutical Industries*.

Today, there is no denying that China is an emerging intellectual property power, even though pirated and counterfeit goods remain widely available in many parts of the country. Based on the 2016 statistics compiled by the World Intellectual Property Organization, China now ranks third in terms of international patent applications under the Patent Cooperation Treaty (PCT), behind only the United States and Japan. Among corporate PCT applicants, ZTE and Huawei also rank the first and second in the world, respectively. In addition, China has the world's fourth largest volume of international trademark applications filed under the Madrid system.

Compared with mainland China, Hong Kong has not experienced as dramatic a transformation. Nevertheless, intellectual property protection in this special administrative region has still improved considerably. When I was a kid growing up in Hong Kong, pirated cassette tapes and counterfeit clothes were widely and openly sold. If one were to pay for computer games, such payment would often have been for copying floppy disks, rather than buying genuine software. Even when I was studying in the United States in the 1990s, it was quite common to see people buying pirated computer games, video CDs and DVDs in select shopping malls.

Today, however, many Hong Kong people have acquired at least some basic understanding of intellectual property law. In the recent public debate on the Copyright (Amendment) Bill 2014, for example, many youngsters and university students were amazingly well versed in concepts and terms used by intellectual property lawyers. Because pirated and counterfeit goods are no longer sold as frequently, many Hong Kong people have also changed their attitude towards these goods.

To be sure, there is still widespread piracy in the digital environment, but there is no evidence that the level of online piracy is much higher in Hong Kong than in other parts of the world.

The biggest transformation Hong Kong has seen, however, has to be the change of the intellectual property system from one serving a British colony – or, worse, its mother country – to one tailored to the needs and interests of a somewhat autonomous administrative region. In the patent area, no policy change has better exemplified this transformation than the introduction of the original grant patent system in June 2016, which is discussed in several chapters of this book. Until the introduction of this full-fledged system, Hong Kong re-registers the patents granted by the State Intellectual Property Office of China (SIPO), the U.K. Intellectual Property Office and the European Patent Office. The Hong Kong Intellectual Property Department did not undertake any substantive examination at all.

The second set of stories pertains to positioning and interrelationship. For China, a big question concerns the country's role in the regional and international intellectual property regimes. In its National Patent Development Strategy (2011–2020), SIPO set out a 2015 target of at least two million patent applications for inventions, utility models and designs. Although this target seems highly ambitious – and, for many, mind-blowing – China has already surpassed this target by 2012. Last year, China received close to 3.5 million patent applications – 1,338,503 for inventions, 1,475,977 for utility models and 650,344 for designs. The total of patents granted alone exceeded 1.75 million.

Another area that has received considerable attention is China's emergence as the world's most litigious jurisdiction in all three branches of intellectual property law. With over 12,000 patent lawsuits in 2016, as reported by the Supreme People's Court, China is now one of the world's preferred venues for patent litigation. That Chinese courts have attracted such a high litigation volume is ironic – and, for many, surprising – considering that foreign businesses continue to complain about the lack of rule of law and the underdevelopment of the judicial system in China. Such juxtaposition therefore leads one to wonder whether the significant increase in intellectual property lawsuits could eventually strengthen the country's overall protection and enforcement of intellectual property rights. The growing litigiousness has also sparked concerns about an unprecedented ligation explosion that will eventually backfire on foreign rights holders, making it more difficult to do business in China.

Like China, Hong Kong faces similar questions about positioning and interrelationship, but these questions are different. They are not about the jurisdiction's role in shaping intellectual property developments in the Asia-Pacific region or the world. Hong Kong is just too small a place to take on such a role. Instead, the questions are about the role this special administrative region can and will play in China in view of the country's exciting and fast-paced intellectual property developments. Will the new original grant patent system provide the much-needed boost to reposition Hong Kong vis-à-vis other provinces and municipalities in China? Or should this special administrative region turn to other niche areas, such as the establishment of a hub for intellectual property trading? Ultimately, what will be Hong Kong's intellectual property identity?

A related and oft-raised question concerns Hong Kong's relationship with the Guangdong Province. Such a relationship is important considering that many Hong Kong businesses have production plants and marketing outlets in the Pearl River Delta. With Huawei, Tencent and ZTE,

the Guangdong province has also been home to many intellectual property–intensive businesses, especially in the area of telecommunications services and electronic goods.

Moreover, Guangzhou now has one of the three newly established specialised intellectual property courts, alongside Beijing and Shanghai. This court has been explicitly empowered with cross-territorial jurisdiction over intellectual property cases in the Guangdong province. The province also constantly has to address difficult intellectual property challenges, including the notorious 'shanzhai' (copycat) activities which critics have widely cited as illustrations of the continued inadequacy of intellectual property protection in China.

The last set of stories captured in this book relate to divergence and discontent – or, to be more precise, the uneven distribution of the benefits derived from the intellectual property system. After all, this system does not provide the same benefits throughout the country or across the varying economic sectors. Compared with the first two sets of stories, this final set is more subtle. Yet, the stories are just as important, as they reveal a key policy dilemma confronting intellectual property policy makers in China and other parts of Asia.

It is nothing new to lament the uneven economic developments in China or its enormous gap between the rich and the poor. According to the National Bureau of Statistics, last year China had a Gini coefficient of 0.465, one of the highest in the world. Although economic inequality has received growing attention from policy makers and academic researchers in both China and abroad, inequality in the intellectual property context has been rarely explored.

Out of the three main branches of intellectual property law, the patent regime has been the most revealing about the highly uneven developments in China. Based on the 2016 SIPO figures on invention patents, Jiangsu, Guangdong and Anhui provinces – the provinces with the three largest volumes of applications – had a total of 184,632, 155,581 and 95,963, respectively. Meanwhile, Yunnan, Jilin and Gansu provinces had a total of only 7,907, 7,537 and 6,114, respectively. If one counts provinces and autonomous regions with fewer than 4,000 patent applications, such as Xinjiang, Inner Mongolia, Ningxia, Qinghai, Hainan and Tibet, the statistical contrasts will become even starker.

Like China, Hong Kong has experienced a similar – and arguably more longstanding – gap between the rich and the poor. Emblematic of economic Darwinism and generally reluctant to introduce policies to combat economic inequality, this former British colony has lately been filled with widespread citywide discontent, never-ending public protests and incessant political stonewalling.

Although similar disparity can be found in the intellectual property arena, such disparity is less about people than about economic sectors. To begin with, few individuals in Hong Kong can develop inventions out of their garages. Garages are just too expensive for most local citizens to own. Furthermore, the patent system seems to have benefitted only a select group of industries, leading to the continuous debate about whether Hong Kong should continue to offer protection for short-term patents, which are granted without substantive examination. With the recent establishment of the new original grant patent system, it is therefore fair to question whether the new system will privilege certain industries at the expense of the others.

A related question about the differential impact of the intellectual property system concerns the ownership of patent-intensive industries. Are they based in Hong Kong, originated from China or merely subsidiaries of gigantic multinationals headquartered abroad? If the industries are located outside Hong Kong, should local policy makers start undertaking a deeper analysis on the costs and benefits of stronger intellectual property protection?

Policy makers frequently note, with little or no reflection, the need for stronger intellectual property protection to attract foreign investment. Yet, economists have repeatedly documented the ambiguous linkage between the two. The people in Hong Kong have also begun to realise the significant economic, social and cultural costs incurred by an out-of-balance intellectual property system, as shown in the recent protests against increased copyright protection in the digital environment.

Indeed, the concerns about striking an inappropriate balance were a primary cause for China's resistance to the external push for stronger intellectual property protection in the first place. The challenges confronting Hong Kong policy makers, to some extent, have brought us full circle to the historical debate on intellectual property law and policy in China.

Thus, when all of these three sets of stories are taken together, this timely and important book has provided a rare window to examine the patent developments in both mainland China and Hong Kong. Although the patent systems in these two jurisdictions are rarely discussed together – and even more rarely under the context of the 'one country, two patent systems' framework – the discussion in this volume has been highly insightful and especially instructive. By linking together the parallel developments of these two interrelated yet distinctive systems, this book has greatly enhanced our understanding of intellectual property developments in China.

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