

# The Dilemma and Outlet of Intellectual Property Protection in the Belt and Road Initiative

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## Abstract

Under the new situation of knowledge economy, economic globalization, and the construction of the Belt and Road, in the trade exchanges between bilateral and multilateral countries, intellectual property has become a core competitive factor for enterprises and countries. Due to differences in economic foundations, political systems, and legal systems, countries along the Belt and Road often have conflicts in the application of laws or agreements in handling intellectual property disputes. In addition, not all countries have signed WIPO and joined the World Trade Organization, and the existing intellectual property dispute settlement mechanism and new conflicts formed under the new situation have challenged intellectual property trade in the Belt and Road Initiative. In view of the current complex international situation, in order to resolve the current fierce intellectual property trade disputes, it is urgent to explore an intellectual property dispute settlement mechanism with regional characteristics of the Belt and Road.

## Keywords

The Belt and Road; Protection of intellectual property rights; Dilemmas and solutions.

## 1. COMPARISON OF THE STATUS QUO OF INTELLECTUAL PROPERTY PROTECTION IN THE BELT AND ROAD COUNTRIES

### 1.1. Current Status of Intellectual Property Protection in China

Since the reform and opening up, China has established more and more laws and regulations in the field of intellectual property rights, and the country has promulgated relevant laws and administrative regulations. Join relevant intellectual property protection organizations internationally, sign intellectual property protection treaties, etc. The 1979 "Criminal Law of the People's Republic of China" stipulated infringements of intellectual property rights, such as including trademark protection in the criminal law. From 1982 to 2019, China has established an intellectual property protection system with the Copyright Law, the Trademark Law, and the Patent Law as its pillars, and a number of complementary laws and regulations.

Since 1978, China has successively joined international agreements and conventions such as the World Intellectual Property Convention and the Bern Convention. After the implementation of the Belt and Road Initiative, China has actively signed bilateral and multilateral agreements and memorandums of national cooperation with countries along the route to communicate with the world. The protection of property rights is in line.

### 1.2. Status Quo of Intellectual Property Protection in EU

The majority of EU member states think that market economy is the mainstay. They are common law countries under maritime civilization. Under the judge-centered tradition, the EU

relies mainly on case law and statutory law as a supplement. The statutory law of the European Union is mainly composed of the basic law and secondary legislation. [1]The basic legislation is composed of the basic treaties of the European Community, and the main provisions are the legislation of the European Union. The secondary legislation in the statutory law is based on the EU's basic treaties promulgated or passed various basic and specific provisions, designations and decisions, as well as suggestions and opinions. The legislative issues concerning the protection of intellectual property rights in the European Union are mainly handled by the Council of the European Union. The legal protection of intellectual property rights in the European Union is based on the relevant provisions of the Treaty of the European Communities as the core, and constitutes an intellectual property legal system composed of relevant regulations, directives and relevant laws of the member states of the European Community. [2]Due to the uniqueness of the EU itself and the free development of its internal member states, the EU first established an internal "customs union" in terms of intellectual property protection to speed up the circulation of commodities. In the event of infringement of intellectual property rights, one of the parties can only file a lawsuit in the courts of the member states and issue an injunction to protect their rights. Secondly, the Council of the European Union has coordinated the copyright, design, and trademark rights among member states. In the EU's intellectual property protection system, various aspects are specifically protected by legislation. The EU intellectual property management system is mainly divided into three sections: judicial, administrative confirmation, and administrative enforcement. Under the judicial system, it is divided into the Community Court System and the European Unified Patent Court; under the administrative confirmation, it is divided into the European Patent Office, the European Internal Market Coordination Office, and the European Copyright Collective Management Organization; in terms of administrative law enforcement, each member country carries out law enforcement. Overall, the EU's intellectual property protection is in a leading position in the world.

### **1.3. Status Quo of Intellectual Property Protection in Africa**

Due to the fact that African countries have been in colonies for a long time in history, their economies have lagged far behind other European and American countries, and their legislative level and IP enforcement environment are also lower than the world average. The protection of intellectual property rights in Africa has not yet been established or is relatively weak. Therefore, African countries use their geographic relationships to form intellectual property protection organizations to protect their intellectual property rights.

The current intellectual property organizations formed in African countries are mainly the African Regional Intellectual Property Organization and the African Intellectual Property Organization, and the African Regional Intellectual Property Organization (ARIPO).[3] ARIPO coordinates the protection of intellectual property rights among member countries, and currently has formed an intellectual property protection system for patent rights, trademark rights, and new plant varieties. The African Intellectual Property Organization (OAPI) was established in 1977 through the Bangui Agreement. Although Africa has a system of registration and protection of intellectual property rights, its trademark rights lack independence. Although the intellectual property system of African countries is backward, it is constantly improving.

### **1.4. ASEAN's Intellectual Property Protection System**

19 countries including Malaysia, Indonesia, Thailand, and the Philippines form ASEAN. ASEAN aims to coordinate the political, economic, and military security integration of the region, and mostly adopt the laws of the colonial period. Over time, ASEAN countries have upgraded their domestic intellectual property legislation and revised relevant provisions in accordance with the ASEAN Free Trade Area Agreement and the TRIPS Agreement to meet the needs of development and bring it closer to the world's level of intellectual property protection.

In 1995, ASEAN adopted the "ASEAN Framework Agreement on Intellectual Property Protection Cooperation", which established the promotion of cooperation among ASEAN countries in the field of intellectual property rights, the establishment of the ASEAN Patent Office and the Trademark Office, and the promotion of unified regional patents and high-standard protection The establishment of the system.[4] Afterwards, ASEAN adopted the "Hanoi Action Plan (1999-2004)", "ASEAN Intellectual Property Action Plan (2004-2010)", "ASEAN Intellectual Property Action Plan (2011-2015)" and other action plans to deepen intellectual property rights in the region Professional protection in the field. [5]Since 2001, ASEAN has signed an FTA agreement under the 10+X model. After EAFTA and then CEPEA, until 2011, the ASEAN-led 10+6 plan, namely RCEP, was released to replace EAFTA and CEFTA. The level of intellectual property protection in ASEAN is relatively high compared to the Middle East.

In summary, the level of intellectual property protection in the countries and regions along the Belt and Road is complicated. Different political, economic and legal environments have caused conflicts in intellectual property trade between each other. The intellectual property protection systems in ASEAN, the Middle East, and Africa are relatively poor, and it is necessary to raise their level of intellectual property protection as soon as possible.

## **2. THE DILEMMA OF INTELLECTUAL PROPERTY PROTECTION AMONG COUNTRIES ALONG THE BELT AND ROAD**

Chengsi Zheng pointed out: "The intellectual property system, like any other legal system, is not perfect. 'There is a benefit and there is a disadvantage.' However, as long as the advantages outweigh the disadvantages, or by 'seeking the advantages and avoiding the disadvantages', the final result can be more advantageous than disadvantages. It should not be denied." [6] The international protection system of intellectual property rights is the same, and the pursuit of intellectual property protection under the Belt and Road Initiative has become inevitable.

### **2.1. High International Intellectual Property Standards and Uneven Protection Levels of Countries Along the Route**

The international protection of intellectual property rights itself should promote development and technological progress, but from the perspective of developing countries and those least developed countries, in fact, the system has not seen the promotion of "development", or even played a role. [7] Hindering effect. In the international intellectual property protection system with TRIPs as the core, a minimum protection standard principle is established. [8] However, the most common consideration is the actual situation of developed countries, ignoring the situation of developing countries and the least developed countries, leading to the The least developed countries are struggling in the current international intellectual property system.

From the official website of the Belt and Road Initiative, the countries and regions that have signed cooperation agreements with China include a few economically developed countries and most developing countries. Due to unbalanced economic development, differences in cultural traditions, and inconsistent political patterns, the differences in intellectual property protection among countries along the route have been severely divided. Among them, the European Union has a high level of intellectual property protection, while most countries in Africa, the Middle East, and Central and Eastern Europe have relatively low levels of intellectual property protection. The divergence of the level of intellectual property protection in the participating countries of the Belt and Road Initiative makes it unfair to these countries if uniform international standards are used, which will increase conflicts between countries and increase friction in the trade process. The international treaties that different countries have joined, the memorandums of cooperating countries, and their participation in international intellectual

property protection organizations are not the same, and their implementation of intellectual property protection standards are also different, resulting in multiple complex requirements for the same intellectual property conflict, and deepening trade between countries Risks hinder the free circulation of knowledge products.

## **2.2. The Impact of the Bottleneck Period in Doha Declaration**

The Doha Round of Trade Negotiations of the World Trade Organization, which started in November 2001, has yet to reach an agreement. The Doha Declaration covers five aspects of the TRIPS Agreement, including the patent compulsory licensing system, the establishment of a multilateral system for notification and registration of geographical indications, and the protection of traditional knowledge and folklore. A consensus was reached in 2003 on the patent compulsory licensing system in public health issues. In the compulsory licensing system for patented medicines, the "Decision to Implement Article 6 of the TRIPS Agreement and Public Health Declaration" was adopted. Although it has brought benefits to developing countries, the document is only a preliminary decision on public health. The application issue is not covered. Regarding the unilateral and multilateral registration of the protection of geographical indications, developing countries and developed countries have a distinct conflict; the developed countries led by the United States oppose the expansion of protection of geographical indications, and advocate the main provisions of domestic laws and oppose the TRIPS Agreement Multilateral registration system in China. Issues on whether traditional knowledge and national protection should be included in the TRIPS Agreement framework and the revision of the coordination between the TRIPS Agreement and the Convention on Biological Diversity (CBD) were opposed by developed countries such as Europe and the United States, and the protection of traditional knowledge was not included in the TRIPS Agreement. And modify the TRIPS agreement.

## **2.3. Challenges of New International Intellectual Property Rules Beyond the TRIPS Standard**

Since the beginning of the 21st century, developed countries headed by the United States, in order to pursue their own best interests and protect their own national interests, have proposed to establish higher intellectual property protection for water products to adapt to the development of the new situation. The TRIPS agreement has been unable to meet this need. A new global protection mechanism for intellectual property rights needs to be developed.[9] The United States and Europe used the WCO as a place to formulate new rules and drafted SECUKE, but it was not passed due to lack of sufficient support. Secondly, the United States worked with other developed countries to formulate ACTA, avoiding developing countries, and enforced it in the WTO with the unanimous consent of developed countries. This forced developing countries to join the WTO. The dispute was too large to pass. Finally, the United States formulated high-standard intellectual property protection clauses in regional trade agreements, such as TPP. The United States withdrew in 2018 and later changed its name to CPTPP.[10] The developed countries led by the United States are raising the standards of intellectual property protection, affecting the intellectual property protection of other developing countries, excluding developing countries' role in international intellectual property affairs, and weakening China's competitive advantage in the international trade structure.

## **2.4. Countries Along the Route Abuse Intellectual Property Rights and Form Trade Barriers**

The purpose of intellectual property-related laws formulated by various countries is to protect the interests of domestic enterprises. In order to develop domestic enterprises, some countries will formulate mandatory laws and regulations to restrict foreign enterprises from entering the country and strengthen the monopoly position of domestic enterprises. For

example, in 2014, the EAEU's commodity trade regulations in the region prohibited importers from non-member countries from importing trademark rights without the permission of the trademark owner. Regional trade barriers hinder the effective and free circulation of commodities and cause unfair trade.

Special legislative measures refer to the passage of special legislation by the country to set up some obstacles in international trade, the most typical of which are the "337" and "special 301" clauses of the United States. [11] In recent years, the annual "Special 301 Report" has included China in the priority list of countries for inspection, and has criticized China's current status of intellectual property protection in a large space. The "337" investigation is an important means for the United States to use intellectual property disputes to organize or restrict foreign companies or their products from entering the United States.

### **3. DISCUSSION ON THE STRATEGY OF INTELLECTUAL PROPERTY PROTECTION IN THE CONSTRUCTION OF THE BELT AND ROAD INITIATIVE**

#### **3.1. Coordinate the National Intellectual Property Protection Standards of The Belt And Road Initiative**

Xi Jinping pointed out: "We will build the Belt and Road into a road of peace and an ancient silk road, which will flourish in times of war and decline in times of war." [12] In 2016, through the "Joint Initiative to Strengthen Cooperation in the Field of Intellectual Property of the Belt and Road Countries" and then to the "Agreement on Strengthening the Belt and Road Intellectual Property Cooperation between the People's Republic of China and the World Intellectual Property Organization" signed during the 2017 Belt and Road International Cooperation Summit Forum to promote intellectual property The strategy has entered a new stage.[13] Countries along the route need to sign international treaties to coordinate the uneven level of intellectual property protection. Bilateral and multilateral cooperation agreements and national cooperation memorandums have formed a unified intellectual property protection standard on a partial scale, and then expanded from some countries to countries along the Belt and Road. Establish uniform standards for the protection of intellectual property rights in the region, and stipulate sanctions on countries that arbitrarily raise standards to stabilize trade liberalization. The establishment of the Belt and Road Intellectual Property Information Resource Database enables countries along the route to keep abreast of the latest developments in foreign intellectual property protection, provide early warning for the development of the domestic exporter industry, and reduce the occurrence of intellectual product trade disputes caused by exports.

#### **3.2. Constructing A New Order of Intellectual Property Protection Along the Belt and Road**

The stagnation of the Doha Declaration shows that developed countries headed by the United States dominate international intellectual property protection, which has led to the disorder of world intellectual property protection. After proposing the Belt and Road Initiative, China should take the initiative to advocate and participate in the formulation of a new intellectual property trade order, seek common ground while reserving differences among countries along the route, reduce differences in intellectual property protection standards, reduce trade frictions among participating countries, and increase participation in the Belt and Road Initiative. The right to speak between countries. The new order of intellectual property rights to be constructed must conform to the current stage of intellectual property development in China, and fully consider the status quo of intellectual property protection in participating countries. As soon as possible, the unresolved issues of "the coordination of the Convention on

Biological Diversity and the TRIPS Agreement, the inclusion of traditional intellectual property rights and folk culture in TRIPS, the expansion of geographical indications and the compulsory power of the multilateral registration system" in the Doha Declaration will be put on the agenda as soon as possible. Establish a Belt and Road Intellectual Property Dispute Settlement Agency, which is specifically responsible for intellectual property disputes between participating countries in the Belt and Road. Relying on the Asian Infrastructure Investment Bank for design.

### **3.3.Promote A New Round of Negotiations on the Intellectual Property Part of RCEP**

RCEP was established in 2012. It was initiated by ASEAN to build Asia's largest free trade. Currently, it has formed a "10+X" model. RCEP's 22 rounds of negotiations over six years are aimed at establishing an efficient and transparent multi-faceted trade dispute settlement mechanism. Promote a new round of RCEP negotiations on intellectual property rights and use it as an intellectual property conflict resolution mechanism for countries along the Belt and Road. Among them, developing countries account for the majority of RCEP, and its intellectual property protection standards are easier to coordinate; it is more suitable for the development needs of countries along the Belt and Road. Taking full account of the different development levels of participating countries, more participating countries can more easily integrate into global and regional supply chains.

### **3.4.Strengthen Judicial Protection and Enforcement of Intellectual Property Rights in the Region**

The national conditions of the countries along the Belt and Road are different, and their enforcement of intellectual property disputes and the intensity of judicial handling are different, which hinders the development of intellectual property protection in the countries along the route. Therefore, it is urgent to explore and implement the construction of a joint intellectual property law enforcement agency in the Belt and Road region, and to coordinate the implementation of intellectual property disputes in the region. In terms of judicial protection, it is necessary to strengthen the timely exchange and communication of intellectual property crime information in countries along the route, and create an open and transparent intellectual property information publication platform.

## **4. CONCLUSION**

The Belt and Road Initiative is in line with the development trend of the world today. Looking at the uneven protection standards of intellectual property rights in countries along the route, and the new rules beyond TRIPS initiated by developed countries, China, as an advocate of the Belt and Road Initiative, should be more responsible for building adaptation. The IP dispute resolution mechanism of the countries along the Belt and Road will build a new order of IP protection and finally achieve a new situation of open and inclusive economic development.

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