

Table of Contents

1 Introduction	1
1.1 The Context within which this Book is Located	1
1.1.1 Areas of Generic Tension.....	1
1.1.2 Legal Transplants in a Multicultural World	2
1.1.3 A Nexus of World Trade and Intellectual Property.....	3
1.2 Location of Topic within this Context	4
1.2.1 Focus on China.....	4
1.2.2 Focus on Enforcement.....	5
1.2.3 What is at Stake.....	6
1.3 Objectives	8
1.3.1 EU-China Interaction in Normative Integration	8
1.3.2 The Creation of the Six-Step Approach	9
1.3.3 Significance of this Book	10
1.4 Research Methodology.....	14
1.4.1 Research Strategy	14
1.4.2 Research Sources.....	18
1.4.3 Chapter Outline	21
2 The Justification for IPR Protection.....	23
2.1 Intellectual Property and Economic Growth – An Economic Analysis	24
2.1.1 An Outlook on Theory of Economics and Law	25
2.1.2 IPR: Incentive for Innovation?	26
2.1.3 IPR: Stimulator of Trade Flow?	32
2.1.4 IPR: Engine of Technology Transfer?.....	34
2.1.5 The Optimal Level of Protection	38
2.2 IPR and WTO Agreement – A Legal Analysis	43
2.2.1 The Legal Concepts of IPR	43
2.2.2 The International Architecture of Protection.....	44
2.2.3 The “Transplant” of TRIPs: A Comparative Law Perspective.....	48
2.3 IPR and Development Policy – A Political Analysis	55
2.3.1 Ideology of IPR Protection.....	55
2.3.2 Development-related Aspects for IPR (DRIPs).....	56
2.3.3 Diplomacy in the IPR Protection.....	60
2.4 Conclusion	65

3 China's Response to the Multilateral Context of TRIPs	67
3.1 Tortuous Journey towards WTO Membership.....	67
3.2 Implementation	70
3.2.1 Law Reform Programme	70
3.2.2 Emergence of the Intellectual Property Regime.....	73
3.2.3 Legal Reform Evaluation	84
3.3 Enforcement Shortcomings.....	87
3.3.1 Cultural Perspective	88
3.3.2 Institutional Perspective	94
3.3.3 Economic Perspective	103
3.4 Conclusion	105
4 Cultural Perplexity in Intellectual Property:	
How to Undo the Gordian Knot	107
4.1 Focusing Accurately on the Targeted Problems	109
4.1.1 Confucius Confusion: Is Stealing a Book an Elegant Offence?	109
4.1.2 New Cultural Perspective.....	116
4.1.3 Insight into the Economic Spectrum	126
4.2 Experience of Japan	131
4.2.1 Analysis of Japan's IP Law and Policy	132
4.2.2 Confucian Values and the Intellectual Creation	134
4.2.3 Tolerant IPR Policy and the Economic Blooming Up.....	135
4.3 Experience of Korea	137
4.3.1 "Eastern Decorum" and Economic Miracle	137
4.3.2 From "Breaking" to "Preaching": Role Shift in IPR Protection.....	140
4.3.3 Preliminary Reflections.....	142
4.4 China's Enforcement Problem: Clues to the Perennial Conundrum	145
4.4.1 Fostering a Shift in China from Rule by Law to Rule of Law	145
4.4.2 Facilitating the Conversion of China from an "IP Imitation" to an "IP Creation" Nation.....	147
4.4.3 Promoting Transformation of China from Perceived Infringer to Unfortunate Victim.....	151
4.5 Conclusion	152
4.5.1 Economic Insufficiency as the Striking Point	152
4.5.2 The Paradox of Cultural Determinism	152
4.5.3 Transitional Dilemma: When Utilitarianism Meets IPR	155
5 EU-China Interaction in Normative Integration	157
5.1 Introduction.....	158
5.2 Matrix of Concerns within Integrations	159
5.2.1 EU Integration and its Impact upon China	159
5.2.2 China's Integration and its Impact on the EU	164
5.2.3 Same Hierarchy, Different Dimension	166
5.3 IPR Enforcement Antitheses	167
5.3.1 IPR Enforcement in the EU.....	167
5.3.2 IPR Enforcement in China	172

5.3.3 Implications of EU Action Plan towards China	181
5.4 Outstanding Issues towards Utilising Flexibilities	183
5.4.1 Exhaustion of Rights: Article 6 of TRIPs and Parallel Imports.....	185
5.4.2 Compulsory Licensing: Daylight Robbery or Timely Help?.....	194
5.4.3 Fair Use of Copyright: Where is the Bottom Line?.....	201
5.5 Conclusion	209
6 Harmony or Coercion? EU-China Trade Relations and IPR.....	211
6.1 Modalities of Trade Relations	212
6.1.1 Theoretical Dimensions.....	214
6.1.2 Overview of Trade Relations.....	216
6.1.3 Pending Challenges	220
6.2 Comparative Analysis: Sino-U.S. Negotiations	222
6.2.1 America's Concerns	223
6.2.2 China's Response	224
6.2.3 Lessons to be Learned	225
6.3 EU-China IPR Negotiations.....	226
6.3.1 Characteristics of EU-China IPR.....	227
6.3.2 Framework of EU-China IPR.....	235
6.3.3 Roles of Non-Governmental Organisations	245
6.4 Feasible Approaches: Negotiation Strategies.....	247
6.4.1 Cultural Characteristics in Commercial Negotiations	247
6.4.2 TPR: Settling Dispute with Gentleness	250
6.4.3 DSB: Additional Form of Leverage	256
6.5 Six-Step Strategy.....	260
6.5.1 Step One: Leniency rather than Coercion.....	261
6.5.2 Step Two: From "Tying Practice" to Undiscounted Policy.....	264
6.5.3 Step Three: "Casting a Long Line to Catch a Big Fish" Instead of "Killing the Goose that Lays Golden Eggs"	266
6.5.4 Step Four: From "Massive Offensive" to "Defeat in Detail": Establish the IP Special Regions and IP Special Industries	268
6.5.5 Step Five: From "Pierre Cardin" to "Hisense": Promote the Role Conversion.....	273
6.5.6 Step Six: From Freerider to Stakeholder: When Beijing Embraces the Olympics	277
6.6 Conclusion	280
6.6.1 US-China IPR Debate: A Cat-and-Mouse Game	280
6.6.2 EU's "Six-Step Strategy"	280
6.6.3 Prospective Trend: Smooth Sailing or Choppy Waves?.....	281
7 Conclusion.....	283
Intellectual Property in World Trade: Justification and Harmonisation.....	283
Intellectual Property in World Trade: Development and Enforcement.....	284
Intellectual Property in World Trade: Integration and Cooperation.....	285

Appendix	287
Sample for Questions around which Interviews are Conducted	287
Sample for Questions in Semi-Structured Interviews.....	288
List of Charts	290
 Selected Bibliography	 295
 Index	 315