

Advisory Committee on Enforcement

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IP ENFORCEMENT: SAFEGUARDING SMES, INNOVATION AND ECONOMIC GROWTH

Contributions prepared by China and the Organization for Economic Co-operation and Development (OECD)

1. At the sixteenth session of the Advisory Committee on Enforcement (ACE), held from January 31 to February 2, 2024, the Committee agreed to consider, at its seventeenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of one Member State (China) and one Observer (Organization for Economic Co-Operation and Development – OECD) on their experiences with IP Enforcement: Safeguarding SMEs, Innovation and Economic Growth.
2. China's contribution describes the implementation of a dual-track mechanism for enforcement of IP in the Zhejiang Province, integrating administrative and judicial mechanisms. It highlights the efforts of the Zhejiang Provincial Intellectual Property Office to building its strength in IP, through a three-pronged approach of implementing administrative IP enforcement, promoting effective synergy between administrative and judicial IP enforcement and establishing enforcement cooperation with all relevant parties, including domestic and international stakeholders. It explains how the Zhejiang Provincial IP Office and other provincial authorities have established a unified fact finding system to integrate IP technical investigations, inspections, testing, and appraisals.
3. The contribution by the OECD summarizes the evidence collected by the OECD and the European Union Intellectual Property Office (EUIPO) on the negative impact the trade in

counterfeit and pirated goods has on small and medium-sized enterprises (SMEs). It highlights the risks SMEs face due to IP infringement, notably closure or even bankruptcy

4. The contributions are in the following order:

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LOCAL PRACTICES OF ADMINISTRATIVE INTELLECTUAL PROPERTY ENFORCEMENT SUPPORTING THE INNOVATIVE DEVELOPMENT OF ENTERPRISES

Contribution prepared by Xiaoyun Xie, Director General, Zhejiang Provincial Intellectual Property Office, China^{*}

ABSTRACT

This contribution focuses on the practice and exploration of implementing administrative intellectual property (IP) rights enforcement to support the innovative development of enterprises in the Zhejiang Province of China. Specific practices include strengthening administrative IPR enforcement and enhancing enforcement cooperation with relevant departments and e-commerce platforms to help enterprises resolve IP disputes efficiently.

I. INTRODUCTION

1. Located on the south-east coast of China, Zhejiang is one of the country's leading provinces in terms of its economy, foreign trade and IP. In 2023, its gross domestic product (GDP) reached 8.26 trillion yuan (approx. 1.14 trillion United States dollars), with total imports and exports amounting to 4.90 trillion yuan (approx. 0.68 trillion United States dollars). By the end of 2023, it was home to 66.27 million residents, more than 10 million businesses, 365,000 valid domestic patents (excluding utility model patents and design patents) and 4,471,000 valid domestic registered trademarks. The Zhejiang Provincial Intellectual Property Office is committed to building its strength in the area of IP with “the strictest protection, the most active innovation and the best ecology” by fully utilizing the advantages of convenient and efficient administrative Intellectual Property Rights (IPRs) enforcement. The major efforts of the IP authorities are outlined below, focusing on three areas.

II. ADMINISTRATIVE INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

2. About administrative IP enforcement

A “dual track” mode integrating administrative and judicial IP rights enforcement has been established based on the Patent Law, the Trademark Law and other related laws of China. Administrative enforcement has the advantages of convenience, high efficiency and low cost compared with judicial enforcement. IP authorities responsible for administrative IPRs enforcement in the fields of patents and trademarks have been established at the provincial, municipal and county levels in Zhejiang Province.

3. Administrative Trademark enforcement

To implement administrative trademark enforcement, the IP authorities at all levels have the legal power to make inquiries, undertake investigations, conduct on-site inspections and seal or seize goods. Where an infringement is identified, they are entitled to take measures in accordance with the law, including ordering the immediate cessation of the infringing acts,

^{*} The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

confiscating and destroying the infringing goods, imposing a fine, etc. The IP authorities at all levels in Zhejiang Province carry out administrative trademark enforcement through two approaches. First, the trademark holder or interested party submits relevant evidence and requests the IP authority to initiate a case for investigation and prosecution. Second, the relevant local IP authority takes the initiative of conducting enforcement inspections *ex officio*. For example, in 2024, the Zhejiang Provincial Intellectual Property Office launched a special measure on IP protection under the name Thunder. During its implementation, 1,132 enterprises across the province were inspected, with six trademark infringement cases detected and submitted for investigation and prosecution. In 2023, the average duration of administrative trademark enforcement cases in Zhejiang Province was 73 days (excluding the statutory suspension period), which ensured effective protection of the trademark owners' brand reputation.



Inspections for trademark enforcement

4. Administrative adjudication of patent infringement disputes

Patent holders or interested parties may seek judicial protection to resolve patent infringement disputes (including with regard to invention patents, utility model patents and design patents) or apply to the IP authorities throughout Zhejiang Province for administrative adjudication. If an infringement is established, the IP authority may order the infringer to cease the infringing act and destroy the equipment and molds used to manufacture the infringing products. Zhejiang is the first province in China where IP authorities at the provincial, municipal and county levels are all empowered to conduct administrative adjudication in the field of patents. Since 2023, 1,294 patent infringement disputes in Zhejiang Province have been settled through administrative adjudication, with an average duration of 53 days (excluding the statutory suspension period), which is about 70 percent less than for patent-related civil litigation cases.



Oral proceedings in administrative adjudication of patent infringement disputes

III. PROMOTING EFFECTIVE SYNERGIES BETWEEN ADMINISTRATIVE AND JUDICIAL INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

5. Establishment of a referral mechanism between administrative enforcement and judicial enforcement

The Regulations on the Protection and Promotion of IPRs in Zhejiang Province, which are local regulations for the province, provide for a case referral mechanism between the IP authorities and judicial institutions, covering case documents, standards and transfer of evidence and the workflow for IP cases of various kinds. For example, the Zhejiang Provincial Intellectual Property Office has signed a case referral framework agreement with the local judiciary, under which patent infringement disputes can be transferred in both directions between the IP authorities and the courts at the request of the patent owners, a practice that has been promoted nationwide since 2021.



Case referral framework agreements signed between IP authorities and judicial institutions

6. Establishment of a joint technical fact-finding mechanism

In 2023, an all-in-one technical fact-finding mechanism was jointly established by the Zhejiang Provincial Intellectual Property Office, the provincial court, the provincial procuratorate and the provincial public security department, integrating IP technical investigation, inspection, testing and appraisal. For example, the Zhejiang Provincial Intellectual Property Office has developed an online management system for technical investigators. Through this system, the IP administrative and judicial departments at the provincial, municipal and county levels manage technical investigators and participate in case management and other work. Currently, there are 245 technical investigators working for various departments in Zhejiang Province; they have participated in the handling of 351 IP cases. Their technical fact-finding opinions have effectively enhanced the quality and efficiency of case handling and reduced the cost of IP dispute resolution and litigation.



Technical fact-finding in IP cases

IV. ESTABLISHING ENFORCEMENT COOPERATION WITH ALL RELEVANT PARTIES

7. Strengthened enforcement cooperation with e-commerce platforms

The Zhejiang Provincial Intellectual Property Office actively cooperates with Taobao, Tmall and other platforms run by Alibaba, which is headquartered in Zhejiang Province, to handle patent disputes within those platforms entirely online. Specifically, the Zhejiang Provincial Intellectual Property Office plays a bridging role in this process. It informs e-commerce platforms of disputes where patent infringement has been found by local IP authorities so that the platforms can take action to delete, block or disconnect the relevant content. In this way, an enforcement cooperation mechanism has been shaped using the following cycle: e-commerce platforms ↔ Zhejiang Provincial Intellectual Property Office ↔ 40 IP authorities nationwide ↔ Zhejiang Provincial Intellectual Property Office ↔ e-commerce platforms. Since 2014, the number of patent disputes resolved through this collaborative approach has exceeded the total number of patent infringement cases filed and accepted by courts and administrative departments nationwide during the same period.



Alibaba presentation on IP compliance policy

8. International cooperation and exchanges on IP rights enforcement

The Zhejiang Provincial Intellectual Property Office regularly communicates with enterprises, industry associations, chambers of commerce, social groups and other relevant entities to provide timely information on progress in IPR enforcement in the province and to learn directly about the demands of domestic and foreign IPR holders. In October 2024, a roundtable discussion on IPR enforcement was held in Zhejiang Province, organized by the China National Intellectual Property Administration and hosted by the Zhejiang Provincial Intellectual Property Office. The meeting was attended by IP officials from the embassies, consulates and organizations in China of eight countries: Austria, Denmark, France, Japan, the Netherlands, Poland, the United Kingdom and the United States of America. During the meeting, field visits to the China Silk Museum, the West Lake Long Jing tea GI producing areas, local IP authorities and live streaming e-commerce sites were organized for the diplomats to better understand achievements in IPR enforcement in Zhejiang, which were well received by the participants.



Roundtable discussion for IP officials from embassies and consulates in China held in Zhejiang

V. CONCLUSION

9. In the future, the Zhejiang Provincial Intellectual Property Office will continue to work on administrative IPR enforcement, protect the IPRs of domestic and foreign rights holders equally, in accordance with the law, and provide the best innovation and business environment for global enterprises to invest and do business in Zhejiang Province.

[End of contribution]

EVIDENCE OF THE RISKS POSED BY THE ILLICIT TRADE IN COUNTERFEIT GOODS TO SMALL AND MEDIUM-SIZED ENTERPRISES

Contribution prepared by Mr. Jaroslaw Mrowiec, trade policy analyst, Organization for Economic Co-operation and Development (OECD), Paris.*

ABSTRACT

This contribution summarizes evidence, using quantitative data on seizures of counterfeit (fake) and pirated goods, of the damaging impact of the illicit trade in counterfeit goods on small and medium-sized enterprises (SMEs). The results are alarming. Intellectual property (IP) infringement significantly increases the risk of SMEs leaving the market by making further operation on their part unprofitable and leading to their closure or even bankruptcy. The evidence was collected by the Organization for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) as part of their ongoing efforts to monitor the risks associated with the illicit trade in counterfeit goods.

I. INTRODUCTION

1. The illicit trade in counterfeit goods is a significant and growing threat in today's globalized and innovation-driven economy. Its harmful impact on economic growth, innovation, the rule of law and, ultimately, trust in well-functioning global markets, should not be underestimated. In recent years, the OECD and the EUIPO have collected evidence on various aspects of this risk. The results have been published in a set of reports, starting with *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* (2016) and expanded and updated in subsequent reports, including *Trends in Trade in Counterfeit and Pirated Goods* (2019)¹ and *Global Trade in Fakes: A Worrying Threat* (2021).² The results are a major concern: as trade in counterfeit and pirated goods accounted for up to 2.5 per cent of world trade in 2019; and when considering only imports into the EU, fake goods amounted to up to 5.8 % of imports. The figures are similar to those for previous years, and the illicit trade in counterfeit goods remains a serious risk to modern, open and globalized economies. Below are the highlights and key findings of a new report³ jointly prepared by the OECD and the EUIPO, titled '*Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*', which builds on previous analysis and presents detailed, quantitative information on the value of the illicit trade in counterfeit goods that infringe the IP rights (IPRs) of SMEs.

II. RISKS OF ILLICIT TRADE IN COUNTERFEITS TO SMALL AND MEDIUM-SIZED FIRMS

2. The trade in counterfeit goods poses a longstanding, global socioeconomic risk potentially affecting public governance, efficient business and the well-being of consumers. At the same

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¹ https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/trends_in_trade_in_counterfeit_and_pirated_goods/trends_in_trade_in_counterfeit_and_pirated_goods_en.pdf

² https://www.oecd-ilibrary.org/governance/global-trade-in-fakes_74c81154-en

³ Full report can be accessed at https://www.oecd.org/en/publications/risks-of-illicit-trade-in-counterfeits-to-small-and-medium-sized-firms_fa6d5089-en.html

time, it is also an easy source of income for organized crime groups and curbs economic growth by reducing business revenue and undermining their incentive to innovate.

3. Counterfeiting and piracy affect all industries and most product categories. All businesses, including SMEs, that use IP, such as trademarks, copyright, patents or designs, in their business models are exposed to the risk of IP infringement.

4. In OECD countries, SMEs make up the majority of businesses and account for around two thirds of total employment.⁴ Although the degree of use of IP by SMEs is relatively low, innovative SMEs report higher IP ownership rates as they actively look for ways to improve existing products, services and business processes. While only a small share of SMEs register their IP, most of those that do so have seen a positive impact as a result. Most commonly, SMEs with registered IPRs report that registration improved their reputation or image (mentioned by 60 per cent of respondents), that it provided them with better IP protection (58 per cent) and that it improved their long-term business prospects (48 per cent)⁵.

5. A key reason prompting SMEs to register their IP is to deter infringement and prevent other firms from copying their products or services. However, as many as 40 per cent of SMEs in the EU do not monitor their markets for potential infringements of their IP.

6. Enforcement data highlights that SMEs are affected by counterfeiting. Counterfeiters target all types of innovative goods produced by SMEs, including electrical machinery and electronics, clothing and fashion goods, perfumery and cosmetics, with toys and games being the most frequently targeted. Moreover, many of those counterfeit goods are substandard, posing health and safety threats to consumers.

7. Most counterfeit goods that infringe the IPRs of SMEs enter the market by mail from China and the Hong Kong Special Administrative Region (China). Transit hubs used by criminals to smuggle such counterfeit goods are fewer in number than the hubs used to smuggle goods infringing the IPRs of larger businesses.

8. In recent years, approximately half of the seized counterfeit products infringing the IPRs of SMEs and intended for the EU market were purchased through online platforms. This highlights a significant shift in the way counterfeit goods are distributed, with e-commerce becoming a primary channel for their sale and distribution.

9. The picture emerging from Customs seizure data is complemented by data from the SME Scoreboard survey conducted by EUIPO among SMEs across the EU. It shows that 15 per cent of SMEs that own IPRs have experienced an infringement, rising to almost 20 per cent for innovative firms. That rate may be an underestimate, given that 40 per cent of SMEs do not monitor markets for counterfeiting of their products. That said, with the increasing frequency of IP infringements, SMEs are showing greater awareness of the need to protect their IP. Counterfeiting affects SMEs in many ways, including loss of turnover, reputational damage and the loss of their competitive edge.

10. In terms of IP enforcement, submitting takedown notices to Internet platforms is the most popular way among SMEs of deterring counterfeiting. Nonetheless, 11 per cent of small firms whose IP has been infringed do not enforce their rights because they perceive enforcement procedures to be too complex, lengthy and costly.

⁴ <https://www.oecd.org/en/topics/sub-issues/sme-indicators-benchmarking-and-monitoring.html>

⁵ https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IP_sme_scoreboard_study_2022/IP_sme_scoreboard_study_2022_en.pdf

11. The damaging impact of IP infringement on business performance tends to be more dangerous for SMEs than for large firms. While the latter have the experience and capacity to deal with such risks and may be able to overcome the impact of infringement, SMEs might not have sufficient resources to compensate for the economic damage caused. More data is being gathered in order to firmly establish a link between the size of businesses (larger companies vs SMEs) and their likelihood of surviving if their IP is infringed, but there is definitely a correlation between survivability and size (or rather a small firm's independence from other companies) within the SME category.

12. In addition, SMEs are often unable to secure effective IP protection and enforce it, as trademarks have limited geographical scope, and protection is often not valid in other markets where infringement might occur. Lastly, SMEs often do not have the resources or capacity to monitor such threats or to develop effective countermeasures.

13. According to the econometric analysis in this study, SMEs whose IP has been infringed are 34 per cent less likely to survive than those that have not experienced IP infringement.⁶ In other words, IP infringements significantly increase the risk that an SME may leave the market. That is especially so in the case of smaller, independent SMEs.

III. CONCLUSION

14. The illicit trade in counterfeit goods causes economic damage by reducing sales and profits and dampening innovation incentives in legitimate industries. The report on the risks of illicit trade in counterfeits to small and medium-sized firms looked at the damage caused to SMEs by that trade. The robust evidence on the magnitude and scope of the risk and related trends informs policymakers about the need to include anti-counterfeiting elements in policy packages designed to support SMEs.

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⁶ See footnote 5