

# China to amend patent law to pacify US, spur innovation

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China is amending its patent law this year, which will address criticism from the United States of inadequate intellectual property protection and also help stimulate innovation domestically.

This is the fourth amendment to the law, which will further strengthen protection of intellectual property (IP), noted Professor Huang Can of Zhejiang University at a two-day conference last week organised by the East Asian Institute of the National University of Singapore.

The conference looked at China's efforts to transition from an investment-led economy to one driven by innovation in order to avoid the middle-income trap or the inability

of a middle-income economy to maintain growth momentum to rise to a higher-income status.

Prof Huang noted that pro-patent amendments to the 1984 patent law were among the reasons for a surge in China's patent applications, particularly in the last 15 years, so that by 2011 it had become the top country in terms of the number of invention patent applications received, surpassing the US.

These changes included amendments in 2001 to bring the law in line with international standards ahead of accession to the World Trade Organisation, and in 2009 to improve patent quality and strengthen enforcement of patent rights, among other changes.

Through the years, the Chinese government has also improved enforcement, by setting up three IP courts in 2014, 18 specialised tri-

bunals at the provincial level from 2017, and a new IP court of appeals at the national level within the Supreme People's Court early this year.

In response to US demands that China address the problems of forced technology transfer and IP protection – two of the sticking issues in the current trade and technology war between the world's two largest economies – Beijing in March enacted the foreign investment law. This legislation prohibits forced technology transfer.

It is also making more changes to the patent law that will kick in this year, including introducing punitive damages that are five times the loss incurred by the plaintiff or patent owner and increasing statutory damages. Right now, some patent owners do not bother to sue those who infringe on their patents

because compensation may not cover their lawyers' fees.

"The current system rewards infringement," noted Prof Huang.

The amended law also encourages innovation by stipulating, among other things, that no less than 50 per cent of the net profit from technology transfer should be given to inventors as compensation.

Apart from legislation, China has also used policy to encourage innovation, such as the 2006 drive towards indigenous innovation and 2015's Made in China 2025 that sought to make the country dominant in high-tech manufacturing.

The 2006 policy used research and development incentives, standards, IP rights and government procurement to promote innovation among Chinese firms.

It scored some successes, including 3G mobile communication stan-

dard TD-SCDMA, noted Professor Erik Baark of the Hong Kong University of Science and Technology.

But both this and the Made in China 2025 policies have met with criticism from the US that they are discriminatory against foreign firms.

Chinese firms such as smartphone makers Oppo and Xiaomi have made use of the global value chains and the technology platforms these provide to make incremental innovation, said Professor Xing Yuqing of the National Graduate Institute for Policy Studies of Japan.

By using foreign core technologies, these firms are able to cut short the process of innovation and build sophisticated smartphones that they can sell cheaply.

Through its efforts to catch up with advanced countries, China has

developed technological edges in areas such as 5G, solar energy, high-speed rail and electric vehicles, noted Professor Gary Jefferson of Brandeis University. But there is "still substantial asymmetry in the technological capabilities" between the US and China, he said.

Still, China's closing of the technology gap with the West – even though it still has quite a lot of catching up to do – has caused insecurity.

Prof Jefferson said American President Donald Trump and his administration believe the US is in a sustainable situation in which China can never catch up, provided the US is able to deploy the necessary blocking strategies, adding that this could start a technological Cold War that would divide the world into two technology spheres.

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