

# **THE RECENT DEVELOPMENT TREND OF INTERNATIONAL INTELLECTUAL PROPERTY LEGISLATION: DOMINANCE AND VARIATION**

*By Chonghan Hu*

*Professor, School of Law, Guangdong University of Foreign Studies*

---

---

## **ABSTRACT**

*In the past, western developed countries had a dominant position in the aspects of international intellectual property legislation. While in recent years, adapting to the changes in the international situation, the dominant situation is undergoing internal variation; that is, from absolute dominant to relative dominant, from hard dominant to soft dominant, from singular dominant to coordination-oriented dominant, from emphasizing the rights of international intellectual property legislation to rights of enforcement in the implementation of international intellectual property laws and regulations.*

**Keywords:** *International Intellectual Property; Legislation; Dominant; Variation*

## **INTRODUCTION**

As is known to all, there is an economic interest opposite between Western developed countries and developing countries. Accordingly, in terms of international intellectual property legislation, these two types of countries can be described as different types of disputes. Since the mid-nineteenth century, Western developed countries have had a leading position in international intellectual property legislation. Recently, however, with the upgrades of the political status and developments of scientific and technological capacity of developing countries, in order to adapt to the changes in the situation, Western developed countries' dominant position in the international intellectual property legislation has undergoing internal variation, and it has formed Important trends of recent development of international intellectual property legislation.

## **WESTERN DEVELOPED COUNTRY'S DOMINANCE OF INTERNATIONAL INTELLECTUAL PROPERTY LEGISLATION**

Western developed countries' most substantial dominance of international intellectual property legislation is their long-term monopoly on rights of leadership of international intellectual property legislation and the rulemaking power. Since the formation of international economic relations, it has been doomed that Western developed countries and their established international rules will inevitably become the leading force in the operation of international economic relations, which depends on the basic facts of the following three aspects:

First, starting with the British revolution, the establishment of capitalist social systems and production methods in the West laid the economic foundation for the Western to rule the world for hundreds of years. The development of the commodity economy and modern industry had enabled the Western to take the lead in modernization and possessing stronger strength than the rest of the world.<sup>1</sup> Through the violent means of wars, western countries forcibly included the rest of countries that were not related to each other into the unified international economic system centered on the West.

Second, during the period of liberal capitalism, colonial plundering and the law of the jungle had brought about dramatic changes in the forms and possessions of natural resources and other

means of production in the international community. Only a few Western powers directly possessed or actually controlled most of the world's natural resources and other means of production, which helped them become the ruling and dominant position in international economic relations. While many small and weak nations around the world lost their political sovereignty as well as economic sovereignty, which ended up in a position of being ruled and dominated in international economic relations. Some foreign scholars have long recognized that the developed countries in the West are the center of the world economy, while the developing countries are at the edge of or outside of world economy, and the peripheral countries are ruled by the central countries.<sup>ii</sup>

Third, in the Bretton Woods system, which is the cornerstone of the modern international economic order, several Western powers have played a dominant role. In the international economic field, whether the General Agreement on Tariffs and Trade (which transformed into WTO currently), which regulates the international trade rules, or the World Bank and the International Monetary Fund, which regulate the financial order, are controlled by Western developed countries.

Although the independence of a large number of emerging nation states after the Second World War and the united struggle of the vast number of developing countries have fundamentally affected the dominant power of Western developed countries on international intellectual property legislation.<sup>iii</sup> It should also be noted that the dominant and actual control of international intellectual property legislation by Western developed countries is an adaptive product of economic power's ability to determine political projection. The current leading and actual control of international intellectual property legislation is an adaptive product of the ability of economic science and technology to determine political projection. There has been no qualitative change in current international economic relations.<sup>iv</sup> Therefore, the construction of the international intellectual property legal system is still difficult to overcome the shadow of the Western power law, and international intellectual property legislation will still be dominated and influenced by Western developed countries to a large extent. The main factors are:

First, having the economic advantage and the vast majority of intellectual achievements in major areas are the basics for Western developed countries to continue to dominate international intellectual property legislation.

Today, the personnel and territory of developed western member states only account for a small part of the world, but their intellectual achievements account for more than 80% of the world. Only the United States, Europe and Japan jointly account for 2/3 of the total, which is several times more than that of over 100 other developing countries, and the sum is nearly several times higher. The West also accounts for about 70% of total volume of global trade. It accounts for more than half of the global financial organizations such as the International Monetary Fund and the World Bank.<sup>v</sup> All of these data determine that the Western countries inevitably have the dominant power in international intellectual property legislation.

Second, the interest and needs of Western developed countries determine the current value orientation of international intellectual property legislation.

The reality of international intellectual property legislation mainly reflects the will of the developed countries in the West, just as the domestic law of a country reflects the will of a country's ruling class. From the principle of dominance, the principles of fairness and mutual benefit and international cooperation and development have not been realized. The Western-style of rule by power still manifests from time to time. From the perspective of the institutional structure of the international economy, the current system is mainly constructed based on the comparison of power between Western countries. Under this situation, developing countries do not have much right of speech. From the perspective of rulemaking, the international organizations that formulate international intellectual property rules, such as the World Intellectual Property Organization and the World Trade Organization, are mainly controlled by Western developed countries. Therefore, the development of international intellectual property legislation will still be subject to the interests of western developed countries to a great extent.

## **IMMANENT VARIATION OF THE DOMINANT POSITION OF WESTERN DEVELOPED COUNTRIES ON INTERNATIONAL INTELLECTUAL PROPERTY LEGISLATION**

It is true that while Western developed countries dominate international intellectual property legislation, the international community has undergone major changes. Since the 1980s, the political, economic, and scientific and technological strengths of the vast number of developing countries have grown steadily. In international economic affairs, developing countries are no

longer merely the vassals of the Western world, but constantly increasing with their own strength, in the meantime weakening the leading role of western countries in international intellectual property legislation. At the value level, the ideal international intellectual property legislation should reflect the needs of majority of international community members. Its vitality lies in the enhancement of the equal consciousness and active participation of all subjects of international law. It is obviously difficult for a vast number of developing countries to show a positive orientation with only a few Western powers to formulate international intellectual property rules. With the relative development of the scientific and technological strength and status of the vast number of developing countries, it will inevitably break western developed countries' dominance situation.

***Variation from absolute dominance to relative dominated***

Before the 1980s, Western developed countries had dominant positions in international intellectual property legislation. After the 1980s, with the increasing scientific and technological strength of the developing countries, the Western countries still have a dominant position in the international intellectual property legal system, but this advantage has become relative dominance. It is no longer possible for Western developed countries to impose their will on the developing countries as they please, and it is no longer for them to act according to their own will. The vast number of developing countries are no longer passive recipients, they attach more importance of making their own voice in the construction of the international intellectual property order.

***Variation from hard dominance to soft dominance***

Traditionally, Western developed countries have forced their own "international" intellectual property rules to be extended to developing countries and regions. These rules have been publicized into Western rights and interests. The way in which they maintain rules is manifested as power straightforward. Although the western developed countries are not giving up the means of exerting pressure on developing countries, they are paying more and more attention to the inherent dominance of the 'international' intellectual property rules. When the effect of imposing pressure on other countries is difficult to achieve the goal, it will focus on encouraging developing countries to accept their own rules through economic, political, cultural and other 'soft' approaches. They seek to achieve their goals through other "practical"

approaches. This will not only meet the needs of their own interests, but will not cause strong dissatisfaction among the developing countries.

For example, in view of the adoption of international codes, Western developed countries found it, hard for developing countries to accept, instead they turn to use intellectual property guidelines, declarations and other 'soft laws' to 'advise' developing countries to recognize Western rules and claims. Guides, propaganda, etc. have comprehensively refined and summarized the achievements of international intellectual property rules in developed countries in recent years. Although the soft laws such as guides and declarations are not the codification of existing international customary law, they are called "an important step in the evolution of universally accepted international customary law." Western developed countries hope to gradually 'sell' their own rules to the vast number of developing countries.

***Variation from singularity-led to coordination-led, and then back to singularity-led.***

The advent of the Cold War era after World War II, and the establishment of a bipolar system and the absolute superiority of American power have enabled the United States to become internal rules maker in the Western world. The end of the Cold War, the rise of the vast number of developing countries, represented by China, and the advent of a multi-polarized era of globalization have declared the end of the era of American singular regulation. However, in order to maintain the overall interests of the Western world, Western developed countries, led by the United States, have increasingly attached importance to coordinating their positions and claims in the construction of the international intellectual property legal system.

The developed countries intended to force the vast number of developing countries to 'give in' through bilateral treaties, which often seemed to be vulnerable and ineffective. Therefore, the developed countries, led by the United States, would find more effective multilateral ways and use the overall strength of developed countries to obtain concessions and compromises from developing countries. Historical experience shows that it is difficult to achieve the purpose of Western developed countries by conducting special multilateral negotiations on international intellectual property law issues. Correspondingly, the vast number of developing countries have strong dependence on Western developed countries in international trade relations. Therefore, the Western developed countries, represented by the United States, have linked the issue of intellectual property rights to international trade issues, successfully incorporated



trade-related intellectual property issues into the Uruguay Round negotiations, and finally forced the developing countries to make concessions of using the overall strength of the developed country group. A package of agreements was reached to realize the common interests of Western developed countries on international intellectual property issues.

***Variation from the emphasis on the right to formulate and the decision-making power of international intellectual property legislation to the right to implement in the process of implementation of the international intellectual property rights.***

In the past, Western developed countries paid attention to their unique rights to formulate and decide on the international intellectual property legislation. The developing countries did not have the right to participate in the formulation of legislation, and can only fully accept the ‘obligations’ in the rules. In recent years, however, in view of the increasing participation awareness of developing countries and the diversification and decentralization of international structures, Western developed countries have lost the capacity to monopolize the right to formulate and decide on international intellectual property rules. In order to achieve greater relative benefits, Western developed countries no longer put too much emphasis on these unrealistic desires, and have to make certain concessions to developing countries in the formulation of certain international intellectual property rules. They are forced to develop with developing countries, and shared the right to make and decision-making. Their focuses on international intellectual property rights have shifted to the execution and implementation powers in the operation process, with the intention of offsetting or distorting the components of the rules that benefit the developing countries, so as to realize their pursuit of rights and interests.

Recently, however, with the active participation of developing countries, the recent international intellectual property treaties contain systems which encompass alleviation of obligations under which contracting nations, especially developing countries, bear. For example, some treaties provide that developing countries may make some reservations on relevant provisions of the treaty in their own situations; in certain cases, the “exceptional clause” may be invoked in exempting contracting nations from general obligations; certain obligations under the treaties can be adopted in the approach of ‘specific commitment’, that is, the actual obligations imposed under treaties shall be left to be determined separately by

bilateral or multilateral negotiations in the future. However, in terms of the interpretation and implementation of some key provisions of the treaties, the United States and other Western developed countries were striving for every right therein and are eager to make explanations for their own interests, in order to make up for their disadvantages in the treaty in practice.

## **CONCLUSIONS**

First, Western developed countries' dominance and actual control of international intellectual property legislation is the logical result of international reality. The status of developing countries and Western developed countries in the international intellectual property system mainly depends on the comparison of various forces among countries, especially the scientific and technological resources. The struggling process of repealing old rules and enactment of new laws in the field of international intellectual property depends to a large extent on the improvement of the status of scientific and technological strength and the strengthening of solidarity and cooperation among developing countries.

Second, in recent years, the inherent variation of the dominant position of Western developed countries on international intellectual property legislation is a tactical change made by Western developed countries in response to the changing situation. It is also the result of long-term struggles of developing countries, which has a certain progressive significance.

Third, from the perspective of value, the ideal international intellectual property law should reflect the interests and requirements of the overwhelming majority of members of the international community. The rights and requirements of more than 200 sovereign countries today are by no means covered by the norms and claims of a few Western developed countries. Only a few western developed countries dominate international intellectual property legislation, restricting or depriving the rights of legislative participation and decision-making power of developing countries, which is obviously irrational. From the perspective of development prospects, with further improvement of the scientific and technological strength and strengthening of solidarity and cooperation of developing countries, the dominant position of Western developed countries on international intellectual property legislation will inevitably become increasingly weaker.



## REFERENCES

---

<sup>i</sup> Liu Jie, *'On Western Norms in International Mechanisms'* (1997) 3 World Economic Research, pp 44-45.

<sup>ii</sup> Li Zong, *'Developing Countries in the Trend of Economic Globalization'* (1997) 7 World Economy, p6.

<sup>iii</sup> Xu Chongli, *'World Economic Integration and the Development Trend of International Economic Legislation in Recent Years'* (1996) 5 Studies in Law and Business, pp48-49.

<sup>iv</sup> Michael R. Lacy, *'ASEAN Bilateral Investment Treaty: A Comparative Analysis'* (1992) 42 Duke Law Journal, p 59.

<sup>v</sup> See the Preface of the 1992 FDI guide.

