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Intellectual Property Systems

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Focus and structure

An IP system (IPS) – the system a country uses to protect IP – covers, in a narrow sense the administration of IP: the examinations and granting of IP applications, the dissemination of IP information, and the promotion of IPP in the domestic and international arenas (Thompson 1993). As I have previously argued (2003), an IPS should also be taken to include the relevant legislative guidance (the legislature and institutional mechanisms) and judicial force (the court and enforcement systems).
A successful administrative system of IP needs institutional instructions and judicial execution, and these three are inseparable elements that must be integrated to contribute to a strong IPS.

This chapter adopts this broader sense of IPS, using patent systems as a focus, to aid the critical understanding of IPS across the world. First, the different ways in which IP functions in each nation are discussed, together with the strengths and weaknesses of various types of national IP mechanism, administration and enforcement. Following this theoretical discussion, the second section focuses on a comparative study of IPS in the US and China. The third section focuses on international IP organizations, and examines their role in harmonizing nation-based IPS, the weaknesses of this international coordination and the feasibility of an international IPS.

Apart from some short cases in the text, the opening case examines the political economy to consider the reward system of IP. The closing case analyses the utility model system and addresses the need for standardization. The IP facts section uses invention patent data of the US and China to examine country differences in IP administration.

Opener: The reward system: Virtue or vice?

This opening case discusses the reward system – an alternative to the conventional (i.e., Western) IPS. The author defines a reward system for intellectual creations as one in which direct government rewards to inventors or other creators, either in material terms or in terms of ‘honour’, are awarded in return for their creations being placed into the public domain.\(^1\) It emphasizes the motivation of creativity and the acceleration of dissemination by bypassing the monopoly situation that forms a major element of ‘conventional’ IPS. The reward system puts less emphasis on IPP, whereas conventional IPS involves both incentives and protection. The dissemination of inventions under a reward system is by the free flow of knowledge, while under the conventional IPS, knowledge is transferred under monopoly and/or licensing rights. The promotion of the exploitation of creative ideas also differs: the reward system is policy driven, in that the government ensures that creativity is stimulated by giving fair awards, while conventional IPS is market driven, with IP owners relying on market demand and promotion to profit from their IP.

Some historic awards illustrate the practice of the reward system in different countries. In 1762, the British government awarded John Harrison £20,000 for his invention of an accurate chronometer, a key element in being able to successfully calculate a ship’s longitude.\(^2\) In 1810,