

Comparative Analysis of RCEP Intellectual Property Rules

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Abstract: The ten ASEAN countries signed the Regional Comprehensive Economic Partnership Agreement with China, Japan, South Korea, Australia and New Zealand in November 2020, abbreviation RCEP, in this special historical period, the signing of RCEP in this most dynamic region of economic development in the world has further improved the level of regional economic integration in Southeast Asia. The provisions on intellectual property in chapter XI of the RCEP are the most extensive provisions. On the basis of the Agreement on Trade-Related Intellectual Property Rights, the provisions on intellectual property are more timely, comprehensive and inclusive. Firstly, from the perspective of the background and historical significance of RCEP signing, this paper clarifies that the agreement on intellectual property rights agreed by all countries in the region is of great significance to the import and export of goods, technology and services of all countries; secondly, a comparison of the similarities and differences between the provisions on intellectual property and other international conventions in the field of intellectual property, and a clarification of their relationship; Finally, it explains the significance of intellectual property clause in RCEP to the importance of China.

1. Introduction

In 2019, trade between China and Association of Southeast Asian Nations (Abbreviation: ASEAN) reached \$641.5 billion. In 2020, the ten ASEAN countries surpassed the European Union to become China's largest trading partner. After eight years and 31 hard rounds of negotiations, complete market access negotiations, particularly in the face of the major test of the COVID-19, the 15 countries finally signed the Regional Comprehensive Economic Partnership Agreement on 15 November 2020, Regional Comprehensive Economic Partnership (Abbreviation RCEP). RCEP, launched in 2012 by the ten ASEAN countries, aims to establish a unified market by reducing tariff and non-tariff barriers, which is the most important result of East Asian economic integration in nearly 20 years.

2. Related research

Liu Xuan [1] proposed as early as 2016 RCEP guidelines on intellectual property rights related to reducing intellectual property barriers in trade and foreign trade. From the RCEP text negotiation process analysis, more similar requirements for intellectual property protection and enforcement methods and rules covered in the TPP; However, some of the participating countries in the RCEP do not have a strong concept of intellectual property protection compared with the developed countries. Hua (2017) [2] analysis of major intellectual property issues in the RCEP Agreement, Clarify the characteristics and future directions of the intellectual property chapter of the RCEP Agreement, And put forward China's intellectual property in the field of countermeasures; At the macro level, Further improve the intellectual property system, Strengthening the application and protection of intellectual property rights; At the micro level, Pay attention to maintaining the balance of interests between the oblige and the subsequent users, Giving full play to the resource advantages of developing countries, Protect genetic resources, traditional knowledge and folk literature and art. Yu Nan (2018) [3] proposed RCEP intellectual property chapter text shows that the relevant members have proposed a number of controversial super TRIPS intellectual property protection rules that have appeared in the terms of the ACTA、TPP Agreement, It shows that regional agreements break through the

irreversible trend of increasing intellectual property protection in the multilateral system. The first Financial Daily (2020) [4] reported: RCEP is China's opening to the outside world, One of the achievements of intellectual property protection, And throughout the RCEP, Relevant intellectual property protection is also the most content, the longest length, Based on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, The overall protection level of intellectual property rights in the region has been comprehensively improved. Huang Dong and Wu Lin (2020) [5] propose that strengthening China-ASEAN intellectual property cooperation is a necessary means to deal with the strong protection of intellectual property rights in developed countries, It is also an inevitable choice to adapt to the economic and trade cooperation between the two sides to the field of science and technology.

3. RCEP intellectual property provisions in relation to other international conventions in the field of intellectual property

RCEP Article 9 of the chapter on intellectual property clearly states that the members shall ratify or accede to the Paris Convention for the Protection of Industrial Property [6] (hereinafter referred to as the Paris Convention), the Berne Convention for the Protection of Literary and Artistic Works [7] (hereinafter referred to as the Berne Convention), the Patent Cooperation Treaty [8] (hereinafter referred to as the PCT'), the Protocol relating to the Madrid Agreement on the International Registration of Trademarks [9] (hereinafter referred to as the Madrid Protocol), the Copyright Treaty of the World Intellectual Property Organization [10] (hereinafter referred to as the WCT'), and the Treaty on Performances and Sound Recording of the World Intellectual Property Organization [11], the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or otherwise Print Disabled [12] (hereinafter referred to as the Marrakesh Treaty), the Budapest Treaty on the International Recognition of the Preservation of Microbes for Patent Processes [13], the International Convention for the Protection of New Varieties of Plants [14], the Hague Agreement on the International Registration of Industrial Designs [15], the Treaty on Performances and Sound Recording of the World Intellectual Property Organization [16] (hereinafter referred to as the Rome Convention), the Treaty on the Law of Singapore [17], As a result, the provisions on intellectual property under the RCEP are compatible with the provisions on intellectual property in the above-mentioned conventions for the protection and development of intellectual property rights in member States, For 15 member States, RCEP intellectual property provisions are only supplementary provisions, The relevant provisions of the above international conventions or agreements on the protection of intellectual property rights are more mature, And accepted by the vast majority of the world, This is an era of rapid knowledge and technological renewal, The protection of property rights is a common understanding, All 15 members are in the framework of the World Trade Organization (hereinafter referred to as WTO') intellectual property agreement, As a result, member States, while adhering to the RCEP intellectual property chapter, The contents of the above-mentioned intellectual property related conventions and agreements should also be implemented in domestic law or applied to the protection and development of intellectual property rights in the country.

3.1. Relationship between intellectual property provisions in RCEP and TRIPS agreements

The Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "TRIPS Agreement ") arises against the background that, as world trade continues to develop, intellectual property issues are increasingly involved in transnational trade and that intellectual property rights are becoming increasingly important in transnational trade, and that, within the WTO context, member States engaged in international trade need a more uniform regime, given that there have been many international conventions relating to intellectual property rights before that date, and that most of WTO member States have acceded to them, but these international conventions are too fragmented and even contradictory, The WTO's desire to have a system of intellectual property rights to unify fragmented rules to serve member States TRIPS came into being. Owing to the background

of the TRIPS's era, TRIPS almost includes the main elements of the Paris, Berne, Rome and the Treaty on Intellectual Property in Integrated Circuits (hereinafter referred to as the I PIC Treaty), the provisions of the four conventions can be regarded as the minimum standards for the protection of intellectual property rights, so that some provisions are more contemporary TRIPS based on the premature conclusion of the four conventions and the continuous development and updating of the intellectual property field.

The 15 member States are WTO member States and, naturally, are parties to the TRIPS Agreement, and therefore RCEP chapter XI on intellectual property clearly states that the scope of the intellectual property rights set out in chapter XI is to TRIPS the copyright and related rights referred to in sections I to VII of Part II of the Agreement, trademarks, geographical indications, industrial designs and patents, integrated circuit layout designs (topologies), protection of plant varieties and protection of undisclosed information; The relationship with TRIPS agreements RCEP also clarified: in the event of inconsistency between the provisions of chapter XI and those of TRIPS agreements, the provisions of TRIPS agreements shall prevail to the extent of such inconsistency, but RCEP are more timely than those of TRIPS agreements, and the protection of intellectual property rights is broader, stronger and more consistent with developments in the intellectual property field in member States.

Especially since RCEP signed in December 2020, In 2020, the world has experienced or is experiencing an unprecedented outbreak of new crown pneumonia, This puts a great test on the national governance system and governance capacity, After the outbreak, Countries are summing up effective and timely solutions to major public safety and health emergencies like this, And think positively about solutions to sudden, high-mortality, high-morbidity diseases that endanger public health, Therefore, The importance of public health is reaffirmed in article 8 of the intellectual property chapter of the RCEP: Members reaffirmed the Doha Declaration on the < of the Agreement on Trade-Related Aspects of Intellectual Property Rights > and Public Health, adopted in 2001(hereinafter referred to as the ' Doha Declaration'), and calling upon Member States to recognize the rights set forth in the Doha Declaration and not to prevent another member from taking any measures to protect public health, and should support the exercise of the right of other members to protect public health, In particular, access to healthy medicines for all.The importance of effective use and international cooperation TRIPS article 31 bis and TRIPS annexes and appendices was particularly emphasized.

Since countries such as Cambodia, among the ten ASEAN countries, are relatively backward in economic development compared to countries such as Japan, with a weak industrial base, lagging in scientific and technological development and low per capita national output, the RCEP specifically provides for transitional periods and technical assistance provisions, without prejudice to the right of member States to any transitional period under TRIPS agreements, The three- to ten-year transition period, in the form of an annex to chapter XI, for Cambodia, Laos, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam in the protection of intellectual property rights, such as accession to multilateral agreements (under chapter XI, article 9, of the RCEP), trademarks, geographical indications, new plant varieties, digital networks, etc., as separate provisions and major innovations based on TRIPS agreements and as a buffer for developing and less developed countries, and immediately following the list of requests for technical assistance set out in chapter XI, annex II, Other Member States shall give technical assistance to Viet Nam, Myanmar, Laos and Cambodia in the areas of trademark protection, circumvention of effective technical measures, geographical indication protection, and remedies for infringement of intellectual property rights. This, together with the provision of technical assistance to the countries of South-East Asia explicitly agreed upon by Australia for the first time in a regional agreement, is also a manifestation of friendly alliances, coordinated development and common progress.

3.2. RCEP Relationship between intellectual property provisions and other international conventions on intellectual property

3.2.1. Relationship between copyright provisions in RCEP and international conventions on copyright

The international protection of copyright began with the signing of the Berne Convention, so far, there are a large number of conventions, but the Berne Convention as the most open and influential copyright protection convention, its practical role is irreplaceable. Rather than the Berne Convention, RCEP as a regional comprehensive economic partnership agreement, there must be no comprehensive provision in the area of copyright, but the provision of article 9 in the intellectual property chapter of the RCEP means that after the entry into force of the agreement, all member States are bound by the convention in article 9.

In addition to the Berne Convention, the Rome Convention, All the remaining conventions are not covered by TRIPS agreements, But with the development of science and technology, Especially in the 21st century, human beings have entered the era of computer, artificial intelligence, The provisions of the Convention have lagged behind the current state of scientific and technological development in the relevant fields, So include WCT、WPPT in RCEP intellectual property provisions, Is a new regulation of copyright in the digital network environment, Compared to the TRIPS agreement, The copyright owner's right of technical protection and the right of marking as specified in the WCT and WPPT are adopted by the RCEP, and described in separate articles, e.g ."Circumventing effective technical measures "(RCEP .11, Article 14)," Protecting rights and managing electronic information "(Article 15), This is of great significance to the protection of intellectual property rights in the digital electronic age; WPPT the moral rights of the performers, Including the right to identify the performer and the right to protect the performance image from distortion, The moral rights of performers do not depend on the economic rights of performers, Even after the transfer of economic rights, Performers still enjoy it, This is also an innovation in the protection of performers' rights. And in the "restrictions and exceptions" clause of chapter XI of the RCEP, The legitimate purpose of emphasizing restrictions and exceptions includes, but is not limited to :' education, research, criticism, commentary, news coverage and access to published works for blind, visually impaired or other print dyslexic persons', Of which persons with visual impairment or other print dyslexia have access to published works, Bringing the spirit of the Marrakesh Treaty into the RCE P, This is in fulfilment of the obligation of States of the world, as advocated in the Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities, to assist persons with disabilities in their right to non-discrimination, equality of opportunity, accessibility and full and effective integration into society, It is also a great step forward in respect for and protection of human rights.

3.2.2. RCEP the relationship between patents, trademarks and other provisions of the International Convention on Industrial Property

With regard to the protection of industrial property rights, The Paris Convention for the Protection of Industrial Property (hereinafter referred to as the Paris Convention) is the first, The most important convention, It is generally regarded as a fundamental convention in the field of industrial property protection, Its basic principles and main contents have guiding significance and important influence on other industrial property rights protection conventions; Similarly, article 9 of the intellectual property chapter of the RCEP makes it clear that members should ratify or accede to the Paris Convention, the Patent Cooperation Treaty (hereinafter referred to as the "PCT"), the Protocol relating to the Madrid Agreement on the International Registration of Trademarks (hereinafter referred to as the" Madrid Protocol "), the Budapest Treaty on the International Recognition of Microbes for Patent Procedures (hereinafter referred to as the "Budapest Treaty "), the Hague Agreement on the International Registration of Industrial Designs (Geneva text), and the Singapore

Treaty on Trademark Law, Among them, only the Paris Pact is part of TRIPS agreement, However RCEP Section III of Chapter XI , " Trademarks ", Section IV , " Geographical Indications ", Section V , " Patents ", Section VI , " Industrial Design ", and Section VIII , " Unfair Competition "are all covered by the protection of industrial copyright under the Paris Convention, But with the development of industry, The same problem as the international protection of copyright is that the content protected by the Paris Convention does not keep up with the pace of scientific and technological progress and knowledge upgrading, So member states see the inadequacies of the Paris Pact, Thus, the Paris Pact's lagging development was complemented by ratification of other international conventions.

The Budapest Treaty (as amended in 1980), to some extent, fills the gaps in the Paris Convention patenting procedures for the preservation of microorganisms, which is a great boon for the field of microorganisms. With regard to the submission of samples for the settlement of multinational applications for microbial inventions, the Budapest Treaty clearly stipulates that the submission of a qualified microbial specimen at any international microbiological filing body would be equivalent to being in a documented state in the respective applicant country, but that a State party may apply for the retrieval of a copy of the preserved microbial specimen at the international depositary, and that the Budapest Treaty also grants the author or his authorized person, the competent industrial property authority of the State party, and a third party legally certified to have access to the microbial specimen the right to apply for the retrieval of the microbial specimen; Moreover, the Budapest Treaty also established the International Union for the Recognition of Microbiological Deposits for Patent Procedures, and a large amount of space was devoted to the detailed regulation of the "International Depositary Unit ", which, unlike international organizations, could become an international depositary as long as it was established on the territory of a State party and any depositary could be an international depositary as long as it met the relevant qualifications set out in article VI of the Budapest Treaty.

RCEP require Member States to ratify the four conventions PCT, the Madrid Protocol, the Hague Agreement on the International Registration of Industrial Designs (Geneva text) and the Singapore Treaty on Trademark Law, which are designed to fill gaps and gaps in RCEP intellectual property provisions, no international convention can do so if all issues in the field of intellectual property are specified in detail, but it is the unanimous pursuit of all countries to build on each other and find the path best suited to the intellectual property development of member States. With regard to PCT, it has made detailed provisions on the submission, retrieval, publication and examination of international patent applications. It has made up for the gaps in international patent applications in RCEP and TRIPS agreements. The provisions in the patent application procedures are all directed at applications within the jurisdiction of member States and the priority and national treatment of patent applications granted to citizens of member States. However, it does not specify international patent applications, in particular international patent retrieval, PCT authorizes "international retrieval units" to patent offices or intergovernmental organizations of member States, After receiving the international search report, the applicant is given the right to challenge and request modification to the international bureau, and to request the international bureau and the international search unit to keep it confidential. Nowadays, the promotion of transnational cooperation in patent technology is a common vision of all countries. There is no doubt that these provisions can promote the transnational protection, international transfer and international cooperation of patent technology.

For the classification of trademarks RCEP adopted is the trademark classification system of the Nice Agreement on the International Classification of Goods and Services for Trademark Registration (hereinafter referred to as the Nice Agreement) signed on 15 June 1957, Although some member States are not parties to the Nice Agreement, Without prejudice, however, to the use of the terms of the classification of trademarks established in the Agreement within the scope of the Member States, RCEP does not require member States to accede to the Nice Agreement, However, member States are obliged to comply with the trademark classification system established by the Nice Agreement; Same thing, Classification of patents, RCEP is the patent classification system established by the Strasbourg Agreement on the International Classification of Patents, signed at Strasbourg on 24

March 1971.

4. Importance of RCEP signature for my country

RCEP is a modern, comprehensive, high-quality, mutually beneficial large regional free trade agreement. A total of \$25.6 trillion GDP the 15 countries covered, about 29.3 percent of global GDP; Covering 15 countries with a population of approximately 2.27 billion; Approximately 30 percent of the global population; Intraregional trade amounted to \$1.04 billion. It accounts for about 27.4% of total global trade. RECP means that the global economy will form an integrated market, will become a new engine of regional and global economic growth.

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