

Chinese Leadership of WIPO: A Threat to Intellectual Property

Brett D. Schaefer

KEY TAKEAWAYS

The World Intellectual Property Organization plays a vital role by allowing inventors around the world to simultaneously register and protect their innovations.

In order for WIPO to function effectively, these patent applicants must have faith that the organization will protect their proprietary information.

China is the world's foremost intellectual property thief. The U.S. must oppose Chinese candidates for WIPO positions if they could compromise the patent system.

The World Intellectual Property Organization (WIPO), which promotes protection of intellectual property worldwide, will soon elect a new Director General. By allowing investors to register and protect their inventions and discoveries in most of the world's countries simultaneously, WIPO serves a vital function. That role, however, requires extraordinary trust by those registering their intellectual property, who must have faith that WIPO will protect proprietary information under the terms set forth in the Patent Cooperation Treaty (PCT) and the procedures of the agency.

This trust is threatened by the candidacy of Wang Binying of China to be Director General. China is the world's pre-eminent intellectual property thief. The Chinese regime has shown little compunction about exerting its policy priorities through Chinese nationals in positions of authority in international

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organizations and punishing Chinese nationals if they fail to comply. The Director General of WIPO has extraordinary discretion and authority. If elected, Wang Binying could compromise the confidentiality of intellectual property to the benefit of the Chinese government.

As a major contributor to United Nations organizations, China deserves to have its nationals employed in international organizations where they can serve independently, but China's record on intellectual property should lead other governments to recognize that Director General of WIPO is not such a position. The U.S. and other nations concerned about protecting intellectual property should work together to highlight the concerns about Chinese leadership of WIPO, coordinate support for an alternative candidate, counter Chinese efforts to secure support through offers of investment and jobs to WIPO member states, and demand enhanced security at WIPO to protect proprietary information. Failure to secure these recommendations should lead the U.S. to withdraw from the PCT, encourage U.S. businesses and inventors to withdraw their patent applications from WIPO, and work with other nations to establish an alternative forum to handle these responsibilities.

What Is WIPO?

The history of WIPO actually predates the establishment of the organization by nearly a century with the adoption of three international agreements: (1) the 1883 Paris Convention for the Protection of Industrial Property; (2) the 1886 Berne Convention for the Protection of Literary and Artistic Works; and (3) the 1891 Madrid Agreement for the International registration of Marks. The organization originally set up to administer the Paris and Berne conventions (the United International Bureaux for the Protection of Intellectual Property) became WIPO when the Convention Establishing the World Intellectual Property Organization entered into force in 1970.¹ WIPO joined the United Nations system in 1974 as a Specialized Agency.

Under the convention, WIPO is charged with promoting intellectual property protection worldwide as a forum to shape rules on intellectual property, helping to resolve disputes over intellectual property across borders, administering the technical infrastructure to connect national intellectual property systems and authorities, sharing knowledge to promote economic and social development, and serving as a depository of intellectual property information. A practical and critical function of WIPO is to harmonize patent systems among countries and serve as a central registrar to file patent applications so that inventors do not have to file individual applications in every country with commensurate costs and processes.

WIPO also administers the treaties entrusted to it:

- **The Patent Cooperation Treaty.** The PCT allows individuals and businesses to apply for a patent and seek protection for an invention across all 153 contracting states, assists national patent offices in decisions to grant patents, and provides public access to technical information on inventions once the patent application is published.
- **The Madrid Agreement and the Madrid Protocol (the Madrid System).** The Madrid System allows filing of a single application to register, manage, and protect trademarks among the 122 countries covered by the Madrid System.
- **The Hague System for the International Registration of Industrial Designs.** The Hague System allows registration of up to 100 designs in 90 countries through the filing of a single application.
- **The Lisbon System for the International Registration of Appellations of Origin.** For a fee, the Lisbon System offers protection of an “appellation of origin” among the 30 contracting parties to identify products of a specific geographical origin.
- **The Budapest Treaty.** The Budapest Treaty allows registration of patents involving biological material among the 80 contracting parties so that submission to national patent authorities is no longer required.

Currently, there are 192 WIPO member states, but not every member state is a party to the above agreements. The U.S. is a party to all of these agreements except the Lisbon Treaty.

Most U.N. organizations are funded primarily through assessed or voluntary contributions from the member states, but WIPO is different in that over 90 percent of revenues come from fees and charges to businesses, research institutions, or individuals for WIPO services. In the two-year budget for 2020 and 2021, for instance, WIPO projects income of \$903 million, of which \$860 million were derived from fees, \$36 million from member state contributions, and the remainder from sale of publications and other miscellaneous sources.² Thus, the 2020–2021 biennial budget forecasts that more than 95 percent of WIPO revenues will be fee-derived.

The Next WIPO Director General

The term of the current WIPO Director General, Francis Gurry, expires on September 30, 2020. Originally, there were 10 candidates to replace Gurry, but two have since withdrawn.³ One of these candidates is Wang Binying of China. On paper, she is well qualified. She has extensive experience after working at WIPO in various capacities since 1992. She is currently the Deputy Director General in charge of the Brands and Designs Sector.⁴ She knows WIPO and its functions well. The problem with her candidacy is not her personal qualifications, but the record and prospective influence of China over her if she is elected Director General. There are three main reasons for concern:

1. The Director General of WIPO has extraordinary authority and the member states too often fail to fulfill their oversight role. For instance, Gurry has been embroiled in a series of controversies during his tenure, including shipment of U.S.-made computer equipment to North Korea and Iran in defiance of U.S. sanctions and, arguably, United Nations sanctions.⁵ Allegedly, Gurry approved these transfers in exchange for Iran and North Korea supporting his election as Director General.⁶ He also was accused of retaliation against staff he considered disloyal.⁷ In each of these controversies, the member states found out after the incident, and few states seemed moved to hold Gurry accountable. Moreover, because of WIPO's negligible reliance on member state funding, even those governments angered by Gurry's actions were unable to pressure the organization directly to censure Gurry.

The opportunity for a future Director General to abuse his or her authority is magnified by the fact that, in 2014, WIPO changed the “terms of office of the Deputy Directors General (DDGs) and the Assistant Directors General (ADGs) so as to coincide with the mandate of the Director General.”⁸ In other words, the new Director General will be appointing the senior leadership in WIPO, each of whom will be incentivized to maintain the Director General in office.

2. China is the world's pre-eminent threat to intellectual property, engaging in economic espionage, forced transfer of technology, and patent infringement. According to the Organization for Economic Cooperation and Development, “In 2016 trade in counterfeit and pirated products amounted to as much as USD 509 billion. This

represents up to 3.3% of world trade.”⁹ According to that study, approximately 80 percent to 85 percent of counterfeit and pirated goods came from China and Hong Kong in 2014, 2015, and 2016.¹⁰ Rewarding China with the leadership of WIPO sends entirely the wrong signal given that one of WIPO’s core missions is to promote protection of intellectual property.

3. Chinese nationals in powerful positions in international organizations have used their authority to advance the interests of China to the detriment of the mission of those organizations.¹¹ For instance, a former Chinese U.N. Under Secretary General in charge of the U.N. Department of Economic and Social Affairs admitted that he used his authority to expel a nongovernmental organization human rights activist focusing on Xinjiang.¹² Under the leadership of a Chinese national, the International Civil Aviation Organization (ICAO) refused permission to Taiwan to attend ICAO meetings, covered up a cyber hack of ICAO servers originating from China, and punished the whistleblower who exposed the cover-up.¹³ Since a Chinese national became Secretary-General of the International Telecommunication Union (ITU), cooperation and support for Chinese priorities, such as the Belt and Road Initiative and Huawei technology, have increased.¹⁴ Failure of Chinese nationals in international organizations to advance Chinese interests carries significant consequences as Meng Hongwei, then the head of Interpol, found out after being imprisoned, charged with corruption and refusing to “follow party decisions,” and sentenced to 13.5 years in prison.¹⁵

Taken together, these three concerns should worry other governments and patent holders. Not everything that WIPO does is of critical importance. Its administration of trademarks and copyrights, for instance, does not generally involve proprietary or sensitive information. In her current position as Deputy Director General of the Brands and Designs Sector, for instance, Wang Binying simply does not pose the same risk as she would as Director General of WIPO or as Deputy Director General of other WIPO sectors.

For instance, one of the most sensitive activities overseen by WIPO is maintaining the confidentiality of patent applications under the Patents and Technology Sector. Under the PCT international patent system, inventors apply for a patent with WIPO for a fee that allows them to file a single “international” patent application that applies across all 153 contracting states.

This application includes technical and confidential information relating to the invention. The applicant can maintain the registration and confidentiality for up to 18 months before WIPO discloses the application publicly. This confidential phase allows the applicant to raise financial backing or establish production plans with secure knowledge that his or her invention will remain proprietary.

The value of this service is clear. Most major corporations, research institutions, universities, and inventors use the PCT system, and PCT fees comprise over 75 percent of WIPO's projected income for 2020/2021.¹⁶ Out of 253,000 total PCT patent applications in 2018, the U.S. was the source of most PCT applications at (56,142), China was second (53,345), and Japan third (49,702).¹⁷ The remainder of the top 10 were European nations and South Korea, but every nation has a stake in protecting the intellectual property of its citizens.

As Director General, Wang Binying would have authority over all WIPO activities including the PCT system. Gaining access to proprietary information on all WIPO patent applications 18 months before they become public would be an incredible coup for the world's most prolific violator of intellectual property, and China would without doubt exert extraordinary pressure to secretly access this trove of information.

As Chinese companies increasingly apply for patents, China may begin to appreciate the value of honoring and enforcing intellectual property rights, but its record as documented by the OECD indicates that it still has far to go. Although the U.S. reportedly favors Daren Tang of Singapore, the most pressing concern for the U.S. should not specifically be the election of Tang, but to ensure that the next Director General is qualified and not susceptible to pressure that could threaten the confidentiality and security of patent applications.

Election Process

The two primary decision-making bodies of WIPO are the General Assembly and the Coordination Committee, and both play a role in selecting the Director General. Under the WIPO convention, the Coordination Committee shall:

nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly.¹⁸

The Coordination Committee, comprised of 83 member states, meets on March 5 and 6 to nominate a candidate for Director General. The committee nominates a candidate from the pool of nominees through successive secret ballots. In each round, fewer candidates proceed. Based on a field of 10 candidates, for instance, in the first round, only the seven candidates with the most votes are eligible for the second round, then the top five, then the top three, then the top two, until a candidate is nominated through majority vote of the committee.¹⁹

Once the Coordination Committee nominates candidate for Director General, the WIPO General Assembly (192 member states), the Assembly of the Paris Union (175 member states), and the Assembly of the Berne Union (175 member states) must approve the candidate by majority vote.²⁰ These votes are scheduled for May 7 and 8. Although, in the past, these votes have been largely a formality, they present a final opportunity for the U.S. should the Coordination Committee nominate Wang Binying.

What the U.S. Should Do

There has been increasing consensus in Washington that rising Chinese influence in international organizations can be detrimental to the missions and purposes of those organizations. Although not every international organization is equally vulnerable in this regard, WIPO is a uniquely tempting target for Chinese exploitation. A Chinese Director General would present China unprecedented opportunities to access proprietary patent information with the goal of giving Chinese businesses illicit access to information to which competitors would not have access for months. China has a long record of infringing on intellectual property rights and it is hard to believe that China would not seize an opportunity for illicit competitive advantage if the opportunity arose.

This should alarm the U.S. and every other government whose citizens have been harmed by Chinese piracy, theft, or intellectual property infringement. To counter this threat, the U.S. should:

- **Engage other WIPO member states and other affected parties, including businesses and research institutions, to lay out concerns posed by Chinese leadership of WIPO.** WIPO is a rather obscure international organization that receives relatively little attention from senior government officials. The fact that it raises most of its funding from fees, rather than government contributions, also results in less direct attention from governments. The U.S. needs to highlight

the importance of WIPO to other governments and bring together the disparate business community, which will be damaged most if China is able to compromise the security of patent applications at WIPO.

- **Ensure that candidates for key senior positions at WIPO are vetted and have a record of adherence to protecting intellectual property.** In addition to the Director General position, a Chinese official as the Deputy Director General of the Patents and Technology Sector—and perhaps key positions in that sector—poses a significant risk. The U.S. should oppose the appointment of a Chinese national to these positions until China demonstrates a record of respecting intellectual property.
- **Advocate for America’s preferred candidate, while being willing to back an alternative.** Last summer, the member states of the Food and Agriculture Organization of the United Nations (FAO) elected Qu Dongyu of China as Director General of FAO in part because the U.S. refused to back the French candidate even after it became obvious that the U.S.’s preferred candidate did not have enough support to win.²¹ The U.S. must learn from this experience. While the U.S. reportedly supports Daren Tang of Singapore, it must not be so wedded to a particular candidate that it is unwilling to support an alternative candidate. There are eight candidates, most of whom have sound records of competence in the field of intellectual property. The U.S. should be willing to support a secondary choice if that candidate can garner majority support from WIPO member states.
- **Counter Chinese incentives and pressure.** China reportedly forgave \$78 million in debt owed by Cameroon to China as an incentive for the Cameroonian candidate to withdraw and help clear the way for Qu Dongyu to win the election for Director General of the FAO. To increase support for Wang Binying, China has reportedly been offering investment deals and jobs to member state governments.²² The U.S. should not be passive, nor should it emulate bad Chinese behavior. The U.S. needs to approach countries to determine their priorities and find ways to support their objectives, as long as they do not compromise U.S. interests or undermine the purposes, goals, or broader integrity of the international system.
- **Oppose the establishment of a WIPO office that would house or allow direct access to proprietary intellectual property in countries with records of gross disregard for intellectual property protection.**

- **Demand that WIPO enhance security of and monitor all access to proprietary patent information.** The PCT houses sensitive and proprietary information, including trade secrets of U.S. inventors. All access should be monitored and any unusual or extensive access should immediately be highlighted for review by WIPO senior management and concerned member states.

Failure to realize these recommendations should lead the U.S. and other concerned nations to withdraw from the PCT, encourage businesses and inventors to withdraw their patent applications from WIPO, and work with businesses and other nations to create a new alternative institution to fulfill the functions of the PCT. While this would likely create some temporary complications and disruption, ensuring the integrity of the patent registration process is of paramount importance.

Brett D. Schaefer is the Jay Kingham Fellow in International Regulatory Affairs in the Margaret Thatcher Center for Freedom, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.

Endnotes

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