

# Tigers and Dragons at the World Intellectual Property Organization

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“Made in Japan” and “Made in Korea” once signified cheap fake goods copied from abroad. Today, however, Japan and Korea are known for their exports of innovative technology (e.g. Sony, Toyota, and Toshiba from Japan; LG, Kia and Samsung from Korea) and creative cultural products (e.g. manga and video games from Japan; pop music and soap operas from Korea). How did these countries, as the rising powers of their day, transform from being “free riders” on foreign intellectual property (IP) to being innovation-exporters and proponents of strong protection of foreign IP at the World Intellectual Property Organization (WIPO)?

The IP regime provides an interesting case to study the rise of new powers in multilateral institutions. It is an exceptionally long-standing regime, with two of its pillar conventions, the *Paris Convention for the Protection of Industrial Property* and the *Berne Convention for the Protection of Literary and Artistic Works*, dating back to the nineteenth century. Today, the IP regime displays a remarkable institutional density. WIPO administers 24 treaties in addition to the century-old Paris and Berne Conventions. Some other IP treaties are hosted elsewhere, such as the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)* at the WTO and the *Universal Copyright Convention* at UNESCO. This historical depth and institutional breadth offers unique opportunities to explore the role and behavior of rising powers in multilateral institutions.

For the purpose of this chapter, we define rising IP powers as countries that experience a rapid transformation of their economy toward becoming global powerhouses of creativity and inventiveness.<sup>1</sup> At the beginning of their ascent, they import most of the IP-intensive goods they consume and they tend to be active free-riders of foreign IP. By the time their rise is completed, however, these powers are major IP rights-holders and they become active supporters of the international protection of IP. As commentators have noted, “every country that became economically great began by copying” (Kingston, 2005: 658), yet “no country has ever become economically developed without also gaining more respect for [IP]” (Yu, 2013: 98).

The growing literature of global IP politics has paid little attention to countries in the midst of becoming knowledge economies.<sup>2</sup> This literature typically portrays IP politics as a static dichotomous antagonism, taking place along a North/South divide, with countries of the North seeking more stringent multilateral IP institutions, and countries of the South asking for additional exceptions, exclusions and transition periods. Susan Sell describes the history of international IP politics as an “elaborate cat and mouse game” (2009: 2), in which developed countries chase developing countries from one institutional venue to the next in pursuit of

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<sup>1</sup> Excluded from our definition are criteria such as market size or regional influence. While most IP powers tend to have a large aggregate economy and exercise substantial influence in their region, it is not necessary the case.

<sup>2</sup> Some recent exceptions include Yu’s recent work on what he calls the “rise and decline” of IP powers (2012) and “middle intellectual property powers” (2011) as well as the edited volume by Abbott, Correa and Drahos (2013).

stronger IP. We ask what would happen if, in the course of this pursuit, one of the mice progressively transformed into a cat?

More specifically, we address in this chapter two questions, echoing the guiding questions set by the editors of this volume. First, where do rising IP powers sit in multilateral negotiations? On one hand, it can be expected that knowledge-economies-in-the-making progressively and rationally adjust their preferences and their behaviors to their changing material interests (Kim 2003), occupying a middle ground between least developed and most advanced economies that enables them to act as active mediators between the two camps, or as a semi-periphery legitimizing the overall IP regime. On the other hand legal, social and discursive institutions may create pressure to maintain traditional stances, creating a lag between the rising powers' (new) material interests and their (old) bargaining positions. Under this second perspective, rising powers are expected to remain in developing countries' coalitions, perhaps using their increased resources to become leaders of the Global South (Dreyfuss, 2009), until a critical juncture occurs, abruptly bringing them into the developed countries' camp. Between these positions, we hypothesize (H1) that the gap between changing material interests and stable institutions is likely to lead rising IP powers to display ambivalent positions in multilateral forums (H1a) and to retreat from global political struggles and international coalitions (H1b). We hypothesize, in other words, that rising powers are pulled too much between stable institutions and changing material interests to lead in any direction. This behavior would be consistent with the observation found in earlier studies that, in multilateral negotiations over IP, the most influential countries and coalition leaders, both in favor and against strong IP protection, tend to have their domestic institutions aligned with their interests (Benoliel and Salama, 2010; Sell, 2010; Karayanidi, 2011).<sup>3</sup>

Our second question pertains to the causal dynamics at play from the time a country resists foreign IP standards to the time it promotes strong international IP protection. This process of transformation is more challenging to explain using the tools of neo-institutionalist theory than abrupt policy changes or continuous evolutions (Thelen 2009). To explain the discontinuous but incremental policy changes experienced by rising IP powers, we hypothesize an ideal-typical three-stage process (H2) taking into account both international and domestic institutions. At stage one (H2a), established IP powers—irritated by what they perceive as growing levels of counterfeiting and piracy—exercise pressure on rising powers and compel them to upgrade their domestic institutions and their participation in multilateral organizations. At stage two (H2b), these exogenously-dictated institutional changes trigger domestic dynamics, notably the economic strengthening of interest groups that benefit from IP protection (H2b1) and the diffusion of ideas sympathetic to strong IP protection (H2b2). At stage three (H2c), ideas and interests favorable to strong IP protection become prevalent at the domestic level and create endogenous pressure on rising powers' governments to actively promote IP protection in multilateral forums.

This chapter explores these hypotheses by looking at two different cases of rising IP powers: Japan around the 1970s and 1980s, and Korea around the 1980s and 1990s. Both economies experienced sustained and intense growth of almost 10% yearly for more than a decade. These

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<sup>3</sup> Such as the US during the *TRIPs* negotiation or African countries during the negotiation of the 1967 Stockholm revision of the *Berne Convention* and later during the negotiations of the 2003 WTO decision over access to patented medicines.

exceptional growth rates were the result of aggressive investment and export-oriented policies, with a clear objective to capitalize on knowledge to become fully developed economies (Shie and Meer, 2010). As a result of such policies, both Japan and Korea, active imitators at the beginning of their rise, eventually became global advocates of IP protection. Investigating their historical records provides a first—but not a definitive—inquiry into the micro-processes driving this transforming process and its impact on multilateral institutions.

## Japan

Japan emerged as a rising economic power in the 1960s. By the 1980s and until the economic crisis of the 1990s, it was widely seen as economic superpower in the making. Walt Rostow, in his seminal book *Stages of Economic Growth*, picked Japan as the first case of a less developed country which had attained take-off and caught up to mature western economies (1990).

Japan's IP stance during most of the 20th century was as a user of IP that resisted strong IP protection. Japanese copyright law remained for a long time based on a statute put in place in 1899 and was only thoroughly revised in a process that began in 1962 (Karjala and Sigiya, 1988). Japan also long remained resistant to strong protection of foreign patents. For many years, lax protection of foreign IP facilitated access to foreign technology and allowed Japan to strengthen its own industrial base. During this time, Japanese companies were encouraged to make slight modifications to foreign innovations, thus transforming Japan from a “nation of imitators” to a “nation of improvers”. By the 1980s, Japan had become a “nation of inventors” (Ganea and Nagoka, 2009).

Japan's transformation from being “a country of imitators” to a proponent of strong IP follows, to an extent, the ideal-typical three-stage process we describe. At the first stage (hypothesis H2a), Japan was subject to intense foreign pressure to adopt western IP standards. Japan's relative seclusion from world politics ended in 1857-1858, with the negotiation of a series of humiliating “Unequal Treaties”. The first of these, the *Treaty of Amity and Commerce* (the *Harris Treaty*), was negotiated under threat from American military ships whose mission was to open up Japan to diplomacy and trade (Atsumi and Bernhofen, 2011). At the end of the XIX century, the Meiji government, which was favorable to industrial modernization, including through the use of western-style IP protection, wished to end the “Unequal Treaties”, whose extraterritoriality provisions were perceived as disadvantageous to Japan (Grandstrand, 2005: 272). Many Japanese feared that access to foreign knowledge might run dry if foreign IP was protected, but the UK and the US governments made Japan's access to the *Berne Convention* and to the *Paris Convention* a precondition for the abolishment of the “Unequal Treaties” (Ganea and Nagoka, 2009: 134). Under this pressure, the Meiji government successfully negotiated new treaties, adopted domestic IP legislations, and joined the *Berne Convention* and the *Paris Convention* in 1899.

Following World War II, Japan recovered to become economically powerful and, as a result, the country became increasingly the target of foreign demands for copyright remuneration. It was ultimately forced to abandon its various reservations under the *Berne Convention* to the requirement of offering full translation and public performance rights (Ganea, 2005: 504). Likewise, the Japanese patent system was reformed in 1975 and in 1988 in response to

American demands, with those reforms intended to offer stronger rights to foreign patent holders (Bransetter and Sakakibara, 2001: 4-5).

That said, the external pressure on Japan progressively became less coercive. Instead of relying on military threat as it did in the XIX century, the US used economic coercion in the 1970s and 1980s. US-Japan disputes over trade and currency cumulated in 1989, when Japan was named as a priority foreign country on the Super 301 list, which was an explicit threat of unilateral US trade retaliation (Flath, 1998: 16-20; Maskus 2002). Following the conclusion of the Uruguay Round in 1994, the US relied instead on the multilateral WTO dispute settlement system to force IP reform in Japan. In 1996, two IP-related WTO dispute settlement processes were begun against Japan, which was accused of providing an inadequate term of protection for sound recordings made before 1971 (WTO 1997). Both disputes were withdrawn from the WTO after Japan amended its copyright law to provide the demanded term of protection (WTO 1996). To this day, the US still frequently complains about IP-related issues in Japan, including the narrow scope and interpretation of Japanese patent claims and the slow pace of patent litigation. Such complaints, however, are now “irritants rather than major conflicts” (Maskus, 2002: 170). They are addressed in the context of the mutual pressure that the US and Japan bring on each other, which go back to the Japan-US Framework talks in 1994, where both partners committed to changes in their patent systems (Maskus, 2002: 2-4; see also Cohen, 1994).

As exogenous pressures became less coercive, endogenous interest for IP protection grew in Japan. The Ministry of Economy, Trade and Industry (METI), in charge of IP policy in Japan, was especially receptive to this growing endogenous interest in IP. Indeed, the METI is well known for its tendency to favor producer interests over those of individual consumers (Okimoto 1989). In this context, and as hypothesized, externally-dictated institutional changes contributed to the economic strengthening of interest groups that benefit from IP protection (hypothesis H2b). For example, domestic rights holders ultimately benefitted from the settlement of the WTO sound recording disputes. The Recording Industry Association of Japan wished, as did the Recording Industry Association of America, to see the end of compilations of foreign pre-1971 recordings, because they believed this would allow them to sell more RIAJ-licensed music (Obenski, 2002: 207). The main losers in that settlement were the makers of compilations of what had been public domain recordings, as well as the consumers who had purchased the inexpensive recordings, but they did not enjoy the same political clout as large industrial groups. By favoring the recording industry, the settlement of the WTO sound recording disputes worsened the political imbalance between the producers and consumers of recordings.

We have hypothesized that, during the transformative process, rising IP powers are likely to display ambivalent positions in multilateral forums (hypothesis H1a) and to retreat from global political struggles and international coalitions (hypothesis H1b). This was true for Japan until the 1980s. For the most part, Japan played unobtrusive roles in the negotiation of major IP agreements during this time. In the 1961 negotiation of the *Rome Convention for the International Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, Japan did not take a prominent role (BIRPI, 1968). Japan did not accede to the *Rome Convention* until 1989, despite having put in place provisions consistent with the convention in 1971 (Ito, 1973; Saitô and Shinichi Isa, 2005). Japan played an ambiguous but

more active role in the 1967 Stockholm revision of the *Berne Convention*, supporting a variety of proposals—some in the interests of rights holders, others in the interests of “users” such as the press, broadcasters, and more limited translation rights (WIPO 1971). When the Stockholm revision of the *Berne Convention* failed and a new diplomatic conference was held in 1971, Japan intervened only on technical issues rather than on the substance of the negotiations (WIPO 1974). Similarly, in the case of the *Paris Convention*, Japan played almost no role in the 1958 revision (BIRPI, 1963) and only a minor role in the failed revision of the 1980s, during which time it was associated with the Group B of industrialized countries.

By the end of the 1980s Japan, now one of the world’s largest producers of semiconductors, began to take a stronger stance, rejecting, with the US, the *Washington Treaty on Integrated Circuits*, partly on the basis that the term of protection offered under the treaty was too short, that it would have offered compulsory licensing, would have failed to provide compensation in cases of innocent infringement, and because the dispute settlement mechanisms provided were deemed inadequate (WIPO 1992; Kukkonen, 1997). The two countries’ rejection doomed the treaty, which never came into force.

Japan’s international advocacy of strong protection of foreign IP (hypothesis H2c) did not begin until the 1980s — about twenty years following Japan’s economic emergence. Japan’s IP royalty and licensing receipts had risen to \$690 million by 1984 (World Bank, 2013). When the WTO Uruguay Round was launched in the 1986, some large Japanese business conglomerates, along with some European and American corporations, formed a transnational coalition called the Intellectual Property Committee. Together, they submitted a draft of the *TRIPS Agreement* to their governments in 1988 (Sell 2003: 53). With this endogenous pressure, the Japanese government was generally aligned with the US and the European Community during the *TRIPS* negotiations. However, even during this time, Japan’s interests were still torn between those aligned with the US and European Community and those aligned with newly industrialized countries (Matsushita, 1992). This led Japan to follow the US and European Community on most issues regarding minimum IP standards, and the leadership of developing countries on some others issues, especially lower standards in software protection and rental rights in sound recordings (Matsushita, 1992).

The conclusion of the *TRIPS Agreement* definitively brought Japan among global advocates of strong IP protection. Since 1994, Japan’s royalty and licensing receipts have risen to more than \$26 billion (World Bank, 2013). The revenue stream generates positive feedback loops and lock-in effects in the Japanese society. Indeed, Japan has moved further to improve IP enforcement by graduating more lawyers, accelerating IP litigation, and making the court system more accessible to infringement actions (Ganea and Nagoka, 2009: 147-149). According to World Bank statistics, Japan became a net IP exporter in 2003 (2013).

Japan has become, like the US, a strong proponent of strong global IP rights. Interestingly, while it was largely the Japanese accession to the Berne and Paris Conventions in 1899 that triggered the long transformative process of Japanese IP law and policy, today, Japan’s international actions to promote stronger global IP protection mainly take place outside WIPO. At the bilateral level, Japan moved to include *TRIPS*-plus requirements in its trade agreements, to post IP technical advisors abroad, and to provide IP-related aid to developing countries (Deere, 2009). It now seeks to act as a role model for developing countries (Obenski, 2002). At

the plurilateral level, Japan is an active member of the “IP5”, a cooperative forum for the “top-tier” patent offices. Japan proposed and now acts as treaty depository for the 2011 *Anti-Counterfeiting Trade Agreement*, a controversial agreement rejected by the European Parliament for being too restrictive.

## Korea

Korea was one of the emblematic rising powers of the 1980s. Its GDP growth rate first hit the 10% mark in 1963 and it averaged 8.3% for the following three decades (World Bank, 2013). Thanks to this sustained growth, Korea successfully lifted itself out of poverty. In the 1980s, it stopped receiving development assistance and even became a net aid provider (World Bank, 2013). In the 1990s, its identity as an advanced economy was sufficiently established, both domestically and internationally, that it broke rank with the G77 and joined the OECD. In 2011, high technology represented 25.7% of Korean exports and 10.9% of Korean GDP, while OECD averages are respectively of 16.5% and 2.4% (World Bank, 2013). Korean IP-intensive industries are thriving.

Korea began its rise, like Japan before it, by offering a lower level of protection to IP. In the 1970s, Korea was neither a member of WIPO nor any major multilateral IP agreement. It joined the *Paris Convention* only in 1980, and the *Berne Convention* as late as 1996, more than a century after its conclusion. Free from the constraints of WIPO treaties, Korea used low IP protection to acquire foreign technologies through imports and reverse engineering (Shi, 2010). For example, because Korea did not offer patent protection to pharmaceutical products, Korean pharmaceutical firms were able to progressively build their R&D capabilities using foreign technologies. They started as importers of finished drugs, then built manufacturing capacities using imported active ingredients, came to dominate the domestic drug market, and finally reached a level of research capabilities sufficient to invent new drug compounds. As one commentator noted, “were it not for such lax IPRs, it would have been impossible for the local pharmaceutical firms to have achieved so much” (Kim, 2003: 5).

Such acquisition of foreign technologies did not go unnoticed. American business associations complained that Korea was one of their largest sources of revenue losses (ITC 1988). In response, when the Congress amended Section 301 of the *Trade Act* in 1984 to authorize the imposition of sanctions against countries that “deny adequate and effective protection of [IP]” (19USC§2411), the Reagan administration immediately threatened to use its new coercive power against Korea. The Korean government quickly reacted and pledged to amend its IP law. The US business community, however, deemed Korean efforts insufficient and expressed disappointment that no sanctions were actually implemented. Sensitive to these grievances, Congress strengthened Section 301 again in 1988 by making it mandatory for the administration to conduct an investigation on any country that denied adequate and effective IP protection (“Special 301”) and to impose sanctions if no agreement was reached within three years (“Super 301”). Korea was placed on the inaugural “priority watch list” and faced a highly credible threat of trade sanctions.

As predicted by hypothesis H2a, this coercive pressure triggered the upgrading of Korean IP law. As part of a deal negotiated with the US, Korea extended the scope of patentability to cover pharmaceutical products, increased the patent term from twelve to fifteen years, offered copyright protection to computer software, better protected foreigners’ copyrighted works,

extended the term of copyright from 30 to 50 years after the death of the author, strengthened penalties against infringement, and created an interagency enforcement coordination task force (Ryan, 1998: 76-77). US pressure also incentivized Korea to accede to three WIPO agreements, namely the *Patent Cooperation Treaty*, the *Budapest Treaty on Microorganisms*, and the *Geneva Phonograms Convention*. However, since the US was itself not a member of the *Berne Convention on Literary and Artistic Works*, Korea did not feel it had to accede to this pillar convention of WIPO. Instead, it joined the UNESCO *Universal Copyright Convention*, of which the US was a founding party.

This swift strengthening of IP protection generated intense opposition in Korean society. Stronger IP protection was widely perceived as contrary to Korean economic interests. Several powerful interest groups, especially the pharmaceutical industry, the publishing industry, and college students consuming copyrighted textbooks, saw themselves as direct victims of the IP reforms and reacted strongly against them (Ryan, 1998: 75). Secondly, the idea of private property over inventions and authorships had long been alien to Korean culture. The reforms were therefore considered to be a departure from local values and practices, and as conceding to the US in a humiliating manner (Park, 2009a: 267). Thirdly, it was feared that the reforms would slow down Korea's ability to catch up with Japanese technology. For historical reasons, the technological dominance of Japan was regarded as unacceptable in Korean society (Min and Sullivan, 1987:59).

As a result of this disconnect between Korean IP laws, cultural norms and economic interests, Korea remained ambivalent in multilateral settings (hypothesis H1a) and did not join established coalitions (hypothesis H1b). Korea's ambivalence and isolation first appeared during the revision of the *Paris Convention* in the mid-1980s. These negotiations were initiated by a coalition of developing countries, led by Brazil, who asked for amendments to the *Paris Convention* allowing weaker patent provisions that would have allowed developing countries greater access to foreign technologies (WIPO 1985). These demands were strongly opposed by developed countries. Korea, however, remained silent. While it could have benefited from the measures advocated by the coalition of developing countries, it had just amended its patent act in the opposite direction due to the US pressure (West, 1983: 137).

Korea also appeared detached during the negotiations of the *Washington Treaty on Integrated Circuits* that took place at WIPO at the end of the 1980s (WIPO, 1992). The Korea semiconductor industry was already booming and investing in R&D, but it lagged behind its American and Japanese counterparts; it was not yet the world leader it would become in the 2000s (Kim 2006). In this transitional period, Korea was apparently undecided if its interests were better served by strong protection, or by the more flexible protection advocated by developing countries. Korea's delegation to the 1989 diplomatic conference included more delegates than several major players, including the USSR and the United Kingdom. Several Korean observers, including the Korean Electronics Industry Association and Samsung Electronics, also attended. However, Korea rarely took the floor. When it did, it was careful, often vague, and did not make any new proposals. At times, it supported developed countries, for example on the procedural rules to adopt the treaty, and other times, it supported developing countries, for example on the definition of the national treatment. Yet, it did not express its preferences on the most controversial issues, such as the duration of the protection or the research exception.

Korea was equally ambivalent and isolated during the negotiations of the *TRIPs Agreement*. It was not part of the coalition of developing countries that opposed the inclusion of IP on the trade agenda (the G-10), nor was it part of the larger coalition of developing countries advocating for a limited version of the *TRIPs Agreement* (the G-14). In its official statements, Korea positioned itself as a “newly industrializing country” and claimed its interests “overlap those of both developed and developing nations, yet do not coincide with those of either camp” (WTO, 1994). Still, Korea was not a very successful mediator, if that was ever its intention. Its few suggestions were largely ignored by other delegations, including its opposition to the most-favored nation clause and its proposal for the establishment of a dispute prevention system specialized on technologies transfer (GATT, 1991).

At first, Korea’s self-isolation from developing countries coalitions during *TRIPs* negotiations might seem surprising. It was already apparent in 1991 that *TRIPs* would force several changes in Korean legislation, including the granting of retroactive protection for foreign works, new rental rights for copyrighted products, new legal protections for trade secrets and databases, the restriction of educational use exceptions, and the extension of the patent term to 20 years (Song and Kim 1994). None of these changes would benefit the Korean economy in the short term. In fact, according to a World Bank study, Korea was the most severely impacted country by *TRIPs* in the short term, ahead of countries like India and Brazil that were strongly opposed to *TRIPs* (2002: 133).

Arguably, the Korean attitude during *TRIPs* negotiations was largely the result of US coercive pressure. The use of Special 301 against Korea in the early stage of the *TRIPs* negotiations was an explicit strategy to “separate Korea from other developing country opponents in the GATT” (Ryan, 1998:75). US coercion also shifted Korean negotiating priorities; the primary objective of Korea was now to make sure that the newly established WTO would prevent further US coercion. During *TRIPs* negotiations, Korean representatives made several statements condemning unilateral pressure and insisting that any dispute regarding IP protection should now be brought under the WTO dispute settlement mechanism (GATT, 1989, 1994; WTO 1994).

Structurally, US coercion had a profound impact on the Korean economy (Kim 2003; Park 2009a). Due to the IP reforms adopted under coercion, several Korean businesses that were previously engaged in basic duplicative imitation were forced to close or to change their business model toward creative imitation or genuine innovation. This transformation from labor-intensive to technology-intensive activities was actively supported by the Korean government. The government implemented ambitious policies to develop R&D capacities, including massive investments in higher education and university research, the creation of several public research institutes, a flexible policy for the mobility of scientists, and the construction of one of the most advanced telecommunication networks in the world. In response to this supportive environment, R&D expenditure grew faster than GDP, and the ratio of R&D to GDP reached 2.4% in 1996, surpassing the OECD average (World Bank, 2013). Korean patent activity soared. From 1980 to 1999, the ratio of Koreans to foreigners among applicants for a Korean patent jumped from 24.4% to 69.4% (WIPO statistics). Several Korean companies thus became “enthusiastic advocates and effective preachers for appropriate

protection for IPR” (Shi, 2010:495). As we hypothesized (H2b1), interest groups supporting strong IP protection grew stronger and their opponents grew weaker.

Along with economic changes came what Ji-Hyun Park calls a “shift in cultural attitude among Koreans” (2009a:268). The Korean government also took it upon itself to change cultural attitudes and ran awareness campaigns in schools, the public administration and the private sector (Park, 2009b:141). Some awareness programs are still in place and, according to a recent study, 109 772 Koreans took copyright training in 2009 alone (Ahn, 2012:10). Arguably, changing attitudes, together with changing economic interests, created a domestic context relatively favorable to increased IP protection (hypothesis H2b). As Wei Shi notes, Korea, once a global leader in piracy and counterfeiting “became a genuine believer and supporter of IPR (2010: 495)

Since the 2000s, Korean institutions, interests and ideas have been largely aligned together in favor of stronger multilateral IP protection. Certainly, some domestic actors, such as the Korean publishing industry and university students, have not benefitted from past IP reforms and still oppose stronger protection. But the prevalent paradigm and the perception of the national interest in Korea has shifted in favor of strong IP protection. As a result, Korea is more active in multilateral institutions than ever (hypothesis H2c). The Korean delegation to WIPO now makes ambitious proposals on its own (e.g. WIPO, 2013a) and also often joins coalitions of advanced economies to submit joint proposals (e.g. WIPO, 2013b). Moreover, Korea has acceded to no less than eight WIPO agreements from 1998 to 2008, including to the *WIPO Copyright Treaty* that remains controversial in some other advanced economies. In 2011, Korea signed the *Anti-Counterfeiting Trade Agreement*, rejected by the European Parliament for being too protective of IP. The Korean Intellectual Property Office also gained international status by becoming one of the few recognized “International Searching Authorities” under the *Patent Cooperation Treaty*, and by co-funding the “IP5 framework” with its counterparts from US, Europe, China and Japan. Towards developing countries, Korea has an attitude analogous to the US’ and the EU’s: it congratulates countries who increase their level of protection, admonishes those it considers to have deficient systems, and offers training and educational programs (e.g. WTO, 2011). In sum, Korean behavior in multilateral IP institutions is now similar to that of other advanced economies.

## Conclusion

This volume asks, first, whether and how the rise of new powers creates pressures on multilateral institutions like WIPO, how rising powers affect institutions like WIPO, and whether institutions like WIPO need the rising powers. We have found that neither Japan nor Korea, as rising IP powers, brought any significant threat or challenge to bear on WIPO or its predecessor, the *Bureaux internationaux réunis pour la protection de la propriété intellectuelle* (BIRPI). The entry of these two countries into BIRPI/WIPO, rather, strengthened the organization by adding to its membership and geographical reach.

Second, this volume asks how multilateral institutions respond to rising powers. To be sure, WIPO did not significantly modify its agreements to accommodate Japan or Korea as rising powers. With regard to developing countries and rising powers more broadly, the revision of the *Paris Convention* at the instigation of Brazil, India, and other rising powers failed, as did

the Stockholm revision of the *Berne Convention*, which had been an attempt to make accommodations to developing countries. However, WIPO did offer a certain degree of flexibility in allowing countries to make reservations to agreements or to hold back at an earlier revision rather than adopting the latest revision. WIPO also put in place accommodations for developing countries in the 1971 revision of the *Berne Convention*, as well as a mechanism to discourage countries' exit in favor of the then-competing *Universal Copyright Convention* (UCC), established in 1952 and hosted at UNESCO; any member of the Berne Union who denounced Berne in favor of the UCC would lose protection in all Berne countries (*Universal Copyright Convention*, 1952, Article XVII and Appendix declaration relating to Article XVII). While not a direct response to rising powers as defined here, this strategy did retain, and bring in, developing countries and rising powers more broadly which might otherwise have been attracted to the alternate UNESCO convention.

This leads to a third key question of this volume, i.e. how the changing institutional landscape affects processes by which rising powers' positions change. In the last fifty years, the number of multilateral conventions and intergovernmental organizations related to IP has increased dramatically. This coexistence of multiple organizations with differing institutional characteristics generates increasing opportunities for forum shopping, both for proponents and opponents of stronger IP protection. In the case of Japan and Korea, WIPO failed to shield rising IP powers from unilateral 301 coercion. Hence some rising powers became strong advocates of the *Memorandum on Dispute Settlement* at the WTO, as it prevents some unilateral trade retaliations. The mega-deal of the Uruguay Round, leading to the *TRIPS Agreement*, shook the institutional identity of WIPO as the main international organization dealing with IP rights. WIPO initially reacted to this existential threat by adopting several initiatives in line with the interests of established IP powers, such as the adoption of two internet treaties, and the negotiations of substantive patent law treaty. But in turn, these initiatives provoked a backlash among rising IP powers, which strongly criticized WIPO for its perceived bias in favor of established IP powers; a "Friends of Development" coalition successfully pushed for a "WIPO Development Agenda", which was established in 2007.

Finally, this volume asks how we might interpret or theorize these developments and the paths taken by rising powers. We have found support, in these two case studies, for several hypotheses. First, we have found that, at least in the cases of Japan and Korea, rising powers are too much torn between domestic institutions and ideas that support a more cautious approach to foreign IP protection, and foreign and growing domestic interests in strong foreign IP, to lead in any (H1). We have also found that foreign pressure, sometimes moderated by IP institutions like WIPO or the WTO, has played a significant role in strengthening IP in Japan and Korea (H2a). This pressure helped to encourage domestic institutional changes in favor of stronger foreign IP that, first, benefitted foreign groups operating in Japan and Korea and, second, eventually benefitted domestic IP owners (H2b). Ultimately, the growth of domestic IP ownership in IP-intensive industries led both countries to become promoters of strong foreign IP (H2c). In this transformative process, WIPO played a key role a) in providing tools used in attempts to strengthen IP around the world—including in Japan and Korea, and b) as mediators of foreign coercion, because WIPO treaties allowed a certain amount of flexibility. WIPO now serves as a non-coercive vehicle whereby Japan and Korea promote IP in developing countries by sponsoring WIPO events, training, capacity-building, and technical

assistance, and through the promotion of new treaties and instruments such as a new broadcasting treaty currently under negotiation at WIPO.

Although Japan and Korea were the emblematic poster children of rising countries of their time, we do not claim that their experience is representative of all rising powers in the IP regime. The fact their economic rise was supported by active state intervention and that they share a Confucian culture limit the generalization that can be drawn from these two cases. As state intervention and Confucianism may have made them more impervious to western IP standards, they are particularly hard cases for a smooth transformative process (Shi 2010).

However, as China is also characterized by active state intervention and a Confucian culture, the experience of Japan in the 1970-1980 and Korea in the 1980-1990 might be indicative of the direction China might take in the years to come. China has already experienced unilateral coercion from the US before joining the WTO in 2001 and benefits from the shield of its *Memorandum on Dispute Settlement*. Arguably, China is currently in the midst of its own transformative process, struggling to align its institutions with domestic ideas and interests. If the experience of Korea and Japan are indicative, it could be assumed that Chinese interest groups in favor of relatively weak IP protection will be progressively marginalized and that Chinese domestic institutions will increasingly reflect international standards. One could even anticipate that, in the years to come, China will increasingly express concern about the protection of Chinese IP, especially in South East Asia and Africa. China could attempt to pressure these less developed countries to emulate its own model.

One of the main limits to the analogy between Japan's, Korea's and China's transformative process resides in the changing institutional environment. As opposed to the Japanese and the Korean experiences, China's transformative process takes place in a particularly dense institutional environment. There are many more multilateral IP agreements providing particularly high standards of protection that there were before (such as the *TRIPs Agreement*, WIPO internet treaties, and ACTA), but there are also additional institutions preventing unilateral coercion (WTO *Memorandum on Dispute Settlement*) and standing in the way of the uncritical promotion of IP standards (WIPO Development Agenda)

One could hypothesize that, since a dense institutional environment simultaneously provides more weapons and more shields for all actors involved, it would lead to prolonged battles between established and rising IP powers. The current institutional proliferation could slow down the transformative process of rising powers, such as China, by reducing the ability of established IP powers to exercise direct and unilateral pressure and by increasing the number of institutional adjustments required to align institutions with material interests. As aligning institutions with interests is expected to be necessary to overcome domestic ambiguities in rising powers, and external pressure is assumed to be necessary to trigger their transformative process, it could be the case that yesterday's rising powers experienced a more rapid and straightforward transformative process than today's. This, however, is a matter for another study.

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