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博 士 学 位 论 文

国际知识产权法制的演变

The Evolution of International Intellectual Property Constitution

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## 内容摘要

本文“国际知识产权法制的演变”主要是以国际知识产权相关法律制度的演变历程作为探讨对象。从法律发展与社会变迁相互影响的法社会学角度来看，知识产权国际保护制度的演化基本即是在体现整个国际社会价值目标的嬗变；国际知识产权法律制度，是知识技术交流日趋国际化的产物，但由于国与国间频繁的互动交流而屡屡产生矛盾冲突，因此尤有赖建立一套具有居中协调功能的法律制度，以利于国情互异的国际社会成员共同遵循、合作与发展；这也即是本文从事探讨的主要出发点。

有鉴于此，本文乃从国际法的角度，以当代全球性知识产权条约为经，以知识产权概念的发萌乃至当下现况为纬，采用历史分析与理论研究结合的方法，综合参考坊间有关专著、期刊论文等文献进行主题探讨。所以本文研究包含内容可以上溯自古罗马时期的启蒙时代、巴黎公约体系、伯尔尼公约体系、WIPO 阶段、TRIPS 时代，下迄于后 TRIPS 时代的当代社会，并试图从各阶段历史现象中演绎出现况形成的原因，用以推论整体制度未来的变动趋势；是就演绎整体变迁部分看，这或可谓为本文有所创新之处。

国际知识产权法制既是根据国际社会成员间利用知识产权所形成的权义关系，及为调整这些国际关系的需要而制定的，则自是不容忽略其中维系成员间关系的机构——国际组织的重要性。从巴黎联盟、伯尔尼联盟单纯着重各自领域的国际保护，中间经历世界知识产权组织的整合与传承，到世界贸易组织辖下《知识产权协议》的形成，而使知识产权保护成为国际贸易体制的核心组成部分，这也意味着依赖缔约方的国家强制力和世界贸易组织的国际强制力，得以将缔约方所承诺的知识产权保护与缔约方参加的国际贸易体制紧密联系起来。这样的联系绝不是能够一蹴可几的，它经历过从无到有、从地域性向全球性转变的演化过程，而这一整体的演变历程及其后续发展，正是本文所欲探讨的课题所在。

**关键词：**国际立法；知识产权法；法制的演变

## Abstract

The major object of my graduation thesis so call “The evolution of international intellectual property constitution” is related to the evolution of international intellectual property legal system. From the viewpoint of sociology of constitution about the interaction or mutual influence between legal system development and the whole whirligig of social situation, the evolution of international protection of intellectual property rights is a manifestation of evolution of the values or value target of international society. International intellectual property legal system is the product of internationalization that increasingly exchange of knowledge and technology. However, the frequent interaction between countries makes contradictory and conflict repeatedly arise, Therefore depends on establishes a set of construction which having the coordination function particularly, and for which in order to facilitate the international community members to follow, cooperation and development. Meanwhile, the graduation thesis engaged in the discussion just from this viewpoint.

In view of this, this article is from the perspective of international constitution, through contemporary global intellectual property rights treaty and the concept of intellectual property as well as current status, using the method of historical analysis and theoretical studies, and explore the reference monograph, journal articles and other literature. Therefore, this thesis contains the content can be traced back in ancient Rome during the age of enlightenment, the” Paris Convention on the Protection of Industrial Property “ system, the “Berne Convention for the Protection of Literary and Artistic Works” system, the “World Intellectual Property Organization” (WIPO) stage, the “Agreement On Trade-related Aspects of Intellectual Property Right” (TRIPS) era, the next up in the post-TRIPS era of contemporary society, and trying to interpret the cause of the various stages of historical phenomena, and to infer changes of the system in the future trend. Therefore, Perhaps this may say that the part of historical vicissitude about international intellectual property constitution is the innovation of this graduation thesis.

International intellectual property constitution is the rights and obligations relations which according to the international society community members whom harness the intellectual property, and for adjustment of the needs of these international relationships, which naturally cannot be ignored the importance of the agency to maintain relationship between the members which is “international organizations”. There are “Agreement On Trade-related Aspects of Intellectual Property Right” (TRIPS) under the World Trade Organization (WTO), make intellectual property protection is the core of the international trading system components. This also means that the Party's national mandatory and the international mandatory of World Trade Organization, closely linked the protection of intellectual property rights of parties are committed to the international trading system of parties to participate. This link will not be able to complete in a short time, it is scratch experienced from grown out of nothing, and the evolutionary process which transforms from the Territoriality to the globalization, the evolution of the overall development process and its follow-up is discussed in this essay of the topic.

**Key Words:** International legislation, Intellectual property rights law, The evolution of the legal system

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