IP Key

Devising a Patent Strategy in China

Giovanni F. Casucci

September 2018
System

PATENTS
«literae patentes»

**PUBLIC:** stimulate the public disclosure of technical teachings devoted to solve technical issues (incremental innovation)

**PRIVATE:** exclusive right of economic exploitation
System

PATENTS
«literae patentes»

Conditions:

- Enabling disclosure
- Novelty and Not Obviousness
- Territorial extension claiming and tax payment
Issues

TERRITORIAL EXTENSION of the exclusivity

Time to decide: 12 months from the filing date (Priority)

How to decide: Economic analysis:
COST (certain) / PROFIT (possible)
in a timeframe of 20 years maximum

Predictive/Prognostic approach within the
timeframe territory by territory (i.e. market by market)

Identification of:
- the break even point
- the breaking/lapse point
Issues

TERRITORIAL EXTENSION
of the exclusivity

Elements for
taking decisions: expectation of:

- economic success of the technology patented;
- general respect of the patent rights;
- effective enforceability of the patent in case of infringement.
Issues

USA
327.243.358

EUROPEAN UNION
742.763.933

CHINA
1.416.164.221

TERRITORIAL / MARKET EVALUATION
Issues

SIZE of Market:

EU exports to Mainland China: EUR 173.5 billion
EU imports from Mainland China: EUR 299.9 billion
Total trade in goods: EUR 473.4 billion

Key INDUSTRY SECTORS:

› EU exports to Mainland China are dominated by machinery and equipment, motor vehicles, aircraft, and chemicals.

› Mainland China’s key export items to the EU include machinery and equipment, footwear and clothing, furniture and lamps, and toys.
2017 Trends in patenting
Europe is a leading technology market


- Almost half of the patent applications come from Europe:
  - Germany 15%
  - France 6%
  - Switzerland 4%
  - Netherlands 4%
  - UK 3%
  - Italy 3%

- Countries of origin of European patent applications:
  - Republic of Korea 5%
  - P.R. China 5%
  - Japan 13%
  - US 26%
  - EU 47% (EPO states)
- Top technology fields:
  - Medical technology 13,090
  - Digital communication 11,694
  - Computer technology 11,174
  - Electrical machinery/Energy 10,402
  - Transport 8,217

- The EPO serves large and small applicants:
  - Universities and public research 7%
  - SMEs, individual inventors 69%
  - Large enterprises 24%

- Most active patent applicants:
  - Huawei 2,398
  - Siemens 2,220
  - LG 2,056
  - Samsung 2,016
  - Qualcomm 1,854

All figures are based on European patent applications.
Source: EPO, Status: 22.1.2018
epo.org/annual-report-2017
Issues

China’s patent applications for invention exceeded 1.38 million in 2017, up 14.2% year on year

DEQI Intellectual Property Law Corporation
Issues

China to adopt stricter IPR protection: official

BEIJING - China will adopt stricter intellectual property rights (IPR) protection to give impetus to its opening-up, an official said Thursday (August 30).

China will firmly uphold international rules on IPR and protect IPR owned by both domestic and foreign companies, Shen Changyu, head of the State Intellectual Property Office, said at the China Patent Annual Conference held in Beijing.

"IPR protection is key to innovation-driven development and international trade, which also plays an indispensable role in the country's opening-up," Shen said.

Since the implementation of the Patent Law, foreign applicants have applied for more than 1.77 million patents in China, an average annual increase of more than 11 percent.

In 2017, China ranked second in international patent applications, with 51,000 Patent Cooperation Treaty applications.

Shen said China will promote the transformation of intellectual property and encourage technological exchanges and cooperation between Chinese and foreign enterprises.

China will also deepen international cooperation in IPR and promote the building of open, inclusive, balanced and effective international IPR rules, Shen said.

Source: Xinhua
Editor: dora
## Patents

<table>
<thead>
<tr>
<th>EU</th>
<th>CHINA</th>
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</thead>
<tbody>
<tr>
<td><strong>EU China WTO</strong></td>
<td><strong>IPR 1</strong></td>
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<tr>
<td><strong>IPR 2</strong> (<a href="http://www.ipr2.org">www.ipr2.org</a>)</td>
<td><strong>IP Key</strong></td>
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<tr>
<td><strong>TRIPS Agreement – in force since 1/1995</strong></td>
<td><strong>TRIPS Agreement – in force since 12/2001</strong></td>
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<td>EU</td>
<td>CHINA</td>
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<tr>
<td><strong>Patents</strong>&lt;br&gt;- technical teaching protection&lt;br&gt;- examination through EPO&lt;br&gt;- 20 years from filing date</td>
<td><strong>Patents</strong>&lt;br&gt;- technical teaching protection&lt;br&gt;- examination through SIPO&lt;br&gt;- 20 years from filing date</td>
</tr>
<tr>
<td><strong>Utility Model</strong>&lt;br&gt;- different aim for each member state&lt;br&gt;- no examination&lt;br&gt;- 10 years from the filing date</td>
<td><strong>Utility Model</strong>&lt;br&gt;- only for product innovation&lt;br&gt;- no examination&lt;br&gt;- 10 years from the filing date</td>
</tr>
<tr>
<td><strong>Validity</strong>&lt;br&gt;- before any IP court <strong>OR</strong>&lt;br&gt;- before a centralised Court (Dual System (i.e. Germany))</td>
<td><strong>Validity</strong>&lt;br&gt;- before SIPO (Dual System)</td>
</tr>
</tbody>
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**Parallel filing strategy**
Wenzhou Court (Zhejiang province) assigned damages to CHINT against Schneider about Rmb330m (US$48mln) Settlement at $23mln)
# Designs

<table>
<thead>
<tr>
<th>EU</th>
<th>CHINA</th>
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<tbody>
<tr>
<td><strong>Duration</strong>&lt;br&gt;- 25 years (5 years renewal periods)</td>
<td><strong>Duration</strong>&lt;br&gt;- 10 years (annual renewal)</td>
</tr>
<tr>
<td><strong>Novelty (relative)</strong>&lt;br&gt;- 1 year grace period</td>
<td><strong>Novelty (absolute)</strong>&lt;br&gt;- 6 months priority</td>
</tr>
<tr>
<td><strong>Individual Character</strong>&lt;br&gt;Difference from prior art</td>
<td><strong>Individual Character</strong>&lt;br&gt;Substantial difference from prior art</td>
</tr>
<tr>
<td><strong>Filing</strong>&lt;br&gt;- multiple filings</td>
<td><strong>Filing</strong>&lt;br&gt;- individual shapes (option of multiple filings only for the same category – max 10)</td>
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Designs

<table>
<thead>
<tr>
<th>Publication</th>
<th>Unregistered Design</th>
<th>3 years</th>
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<tbody>
<tr>
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<td></td>
<td></td>
<td>Unfair Competition (only for the effective first sales markets)</td>
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<tr>
<td>EU</td>
<td>Registration</td>
<td>12 months</td>
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<td>Grace Period</td>
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<td>Registration</td>
<td>5 years renewable x 5 times up to 25 years</td>
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<tr>
<td>CHINA</td>
<td>Registration</td>
<td>Up to 10 years</td>
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<tr>
<td></td>
<td>On public domain</td>
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<tr>
<td>WORLD</td>
<td>NO Registration</td>
<td>EU up to 70 years post mortem</td>
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<td>CHINA Up to 50 years post mortem</td>
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</tbody>
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On public domain
Thank you!

Giovanni Francesco Casucci
Partner
Head of IP and Technology
M +39 335 21 84 33
E giovanni.casucci@dentons.com