Enforcing Patents in China

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ENFORCEMENT

The IP Rights are strongly based on the expectation of a real and effective defence of the exclusivity granted by a registered IP right (Patents, Trade Marks and Designs)

THEN

The enforcement is the real critical issue in order to justify:

a) The IP system
b) The investments on R&D and Marketing

*a lack of effective enforcement means*

*a real prejudice on the credibility of all the IP system and on the innovation policies*
Issues

- R&D / Marketing Investments
- IP Investments
- Legal Costs
### System

<table>
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<tr>
<th>EU</th>
<th>CHINA</th>
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<tr>
<td><strong>Civil proceedings</strong>&lt;br&gt;- specialised Courts (each member State)&lt;br&gt;- injunctions &amp; seizures&lt;br&gt;- damage recovery&lt;br&gt;- urgent proceedings (3/6 months)&lt;br&gt;- ordinary actions (2/3 years - average)&lt;br&gt;(Germany and the Netherlands 1 year average)</td>
<td><strong>Civil proceedings</strong>&lt;br&gt;- Min San Ting (32 IP specialised Courts) since 2003&lt;br&gt;- 3 full specialized IP courts in:&lt;br&gt;  - Beijing, Shanghai and Guangzhou (2014)&lt;br&gt;- and now in addition <strong>15</strong> Tribunals&lt;br&gt;- injunctions and seizures&lt;br&gt;- damage recovery&lt;br&gt;- ordinary actions 1,5 year</td>
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<td><strong>Administrative proceedings</strong>&lt;br&gt;- CNIPA (2015 new measures adopted)&lt;br&gt;- only seizures and fines&lt;br&gt;- no damage recovery</td>
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subject-matter jurisdiction essentially comprises:

- All first-instance civil patent, trade secret and software cases;
- All first-instance civil trademark copyright, unfair competition, technical contract cases, with claims above a certain monetary threshold;
- All first-instance administrative IP cases;
- All first-instance criminal IP cases;
- Appeals against first-instance IP judgments rendered by district courts within the territory of each Tribunal.
- All other first instance cases will be brought before the territorially competent district courts

source: https://www.limegreenipnews.com/
<table>
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<th>CHINA</th>
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<tr>
<td><strong>Criminal proceedings</strong></td>
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<tr>
<td>- only in case of evident infringement</td>
<td>- uncommon</td>
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<td>- no specialised Public prosecutors</td>
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<tr>
<td><strong>Customs</strong></td>
<td><strong>Customs</strong></td>
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<tr>
<td>- Import and Export IP control</td>
<td>- Export and Import IP control (10 years duration)</td>
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Special issues

A) Formalities
   all documents shall be duly translated /notarized

B) Only the granted rights can be enforced
   need to file Patents / Utility Models / Design timely

C) Choice between the Administrative / Civil procedure
Figures

Figures

average durations (in days) of first-instance patent civil cases

Figures

Patent civil disputes

<table>
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<tr>
<th>Category</th>
<th>Value</th>
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<tbody>
<tr>
<td>Daily necessities</td>
<td>43</td>
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<tr>
<td>Electrics</td>
<td>28</td>
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<tr>
<td>Operational transportation</td>
<td>17</td>
</tr>
<tr>
<td>Fixed buildings</td>
<td>17</td>
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<tr>
<td>Chemical Metallurgy</td>
<td>15</td>
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<tr>
<td>Physics</td>
<td>14</td>
</tr>
<tr>
<td>Mechanical engineering</td>
<td>6</td>
</tr>
<tr>
<td>Textile papermaking</td>
<td>2</td>
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http://www.san-you.com/English/a/9635.htm
Figures

Types of patent rights of patentees in China mainland

- Design patents: 18.5%
- Invention patents: 51.7%
- Utility model patents: 29.8%

Types of patent rights of foreign, HK, Macao and Taiwan patentees

- Design patents: 2.7%
- Invention patents: 21.6%
- Utility model patents: 75.7%

http://www.san-you.com/English/a/9635.htm
Figures

The winning rate for patent disputes that end with court judgments

http://www.san-you.com/English/a/9635.htm
The average amount of compensation for patent rights infringement

- 2015: 350,000 RMB
- 2016: 1.024 million
- First half of 2017: 1.103 million

http://www.san-you.com/English/a/9635.htm
Figures

Average amount of compensation granted by courts

- Foreign, HK, Macao and Taiwan patentees: 755,000 RMB
- Patentees in China mainland: 1.022 million RMB

http://www.san-you.com/English/a/9635.htm
Figures

Judicial examination on patent invalidation

Beijing IP Court

Patent Reexamination Board of SIPO

http://www.san-you.com/English/a/9635.htm
Trade fairs

Study IPR2 2009

www.ipkey.eu
Trade fairs

2008

Study Tour
FRANCE – GERMANY - ITALY
Trade fairs

2009

Protecting IP at Trade Fairs, information and mediation support

3-6 March 2009, CeBIT, Germany

In co-operation with the Ministry of Commerce of China (MOFCOM), IPR2 supported an information and mediation support facility on-site for the duration of the CeBIT 2009 trade fair to assist in disputes over patents, trademark and industrial design infringements between exhibiting Chinese and European companies. The on-site service was inaugurated jointly by Mr. Chong Quan, Assistant Minister, Ministry of Commerce, as part of a high-level visit by leading Chinese IP enforcement officials, together with the European Commission’s Ms. Ewa Synowiec, Director: DG Trade.

MOFCOM maintains a strong interest in the protection of IP at trade fairs. This particular collaboration was an effective pilot exercise, from which potential and interest in extending the experience and benefits to other trade fairs in Europe and China may be assessed.

This ‘China IPR Desk at CeBIT’ provided an information and companies in support of their efforts to better protect the professional assistance in reaching an equitable solution (including the German authorities, the trade fair organisers a in the previous year).

Deutsche Messe AG). Almost all cases addressed were resolved in the course of the mediation support, dramatically in the previous year.

In the course of the trade fair days, the China IPR Desk at CeBIT addressed a total of 48 cases related to preliminary measures: bailiff enforcement notices, warning letters and infringement and IP protection in Germany and Europe in general.

The typical reasons for seeking support from the China IPR Desk at CeBIT included:
Trade fairs

2009 – 2011

Germany

Trade fairs

2009 – 2011

Germany


Result of Mediation Cases

- Infringement Cases (as final result of Mediation Cases); 96; 62%
- Non-Infringement Cases (as final result of Mediation Cases); 46; 30%
- Open Cases (as final result of Mediation Cases); 13; 8%
Trade fairs

- In EU, only few Trade Fairs are offering IP mediation services (Germany) only few events are offering the Enforcement Regulation system (Italy)

- In CHINA, only Canton Fair is offering a Regulation system offered only to Exhibitors (not to third visitors)

Therefore such good practices should be harmonised and enlarged in EU and in CHINA using a common regulation and common operational practices
Thank you!

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