

IP Key

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)

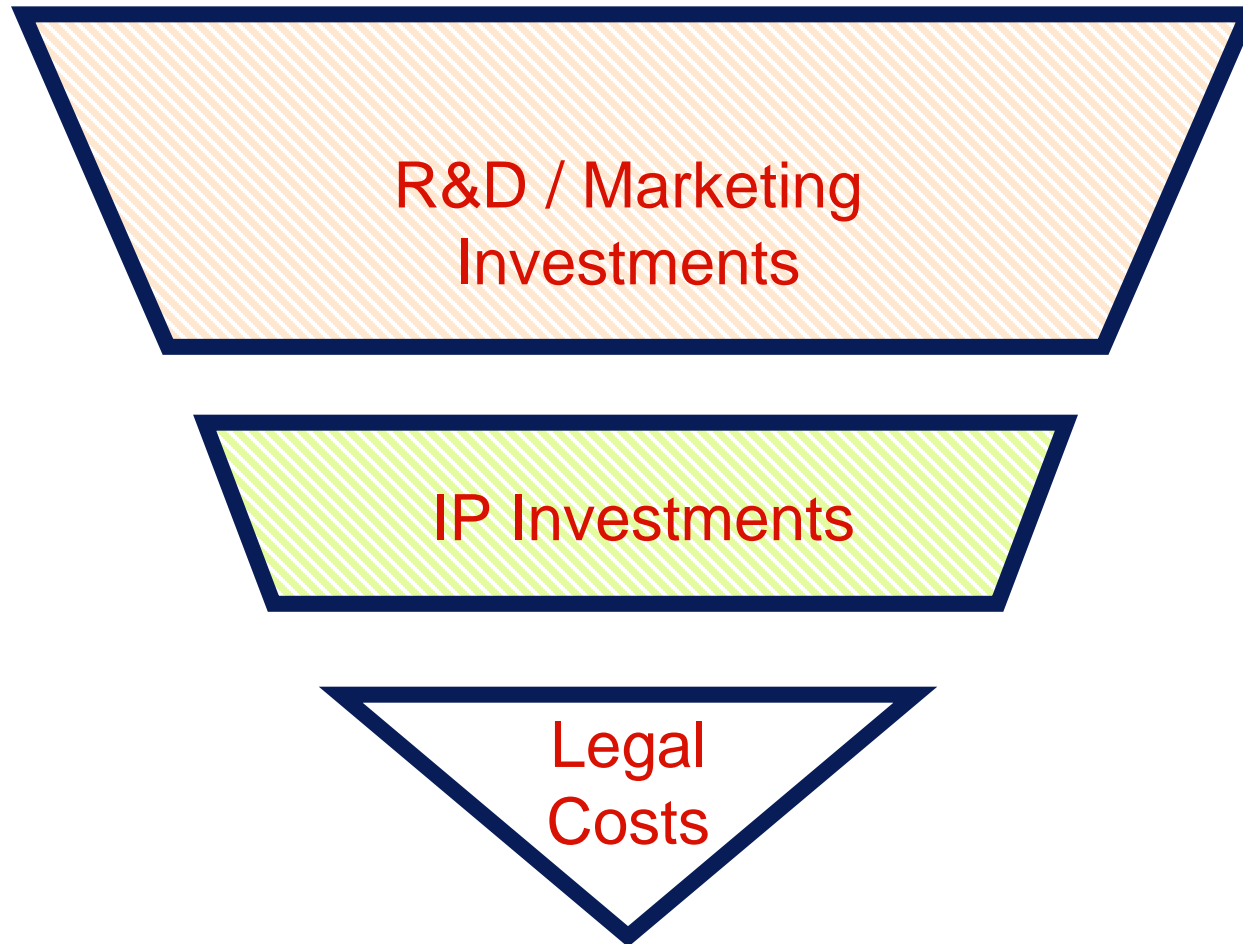
THEN

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



System

EU	CHINA
<p>Civil proceedings</p> <ul style="list-style-type: none">- specialised Courts (each member State)- injunctions & seizures- damage recovery- urgent proceedings (3/6 months)- ordinary actions (2/3 years - average) <p>(Germany and the Netherlands 1 year average)</p>	<p>Civil proceedings</p> <ul style="list-style-type: none">- Min San Ting (32 IP specialised Courts) since 2003- 3 full specialized IP courts in: Beijing, Shanghai and Guangzhou (2014) and now in addition 15 Tribunals- injunctions and seizures- damage recovery- ordinary actions 1,5 year <p>Administrative proceedings</p> <ul style="list-style-type: none">- CNIPA (2015 new measures adopted)- only seizures and fines- no damage recovery

System



IP TRIBUNAL

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/>

System

EU	CHINA
<p>Criminal proceedings</p> <ul style="list-style-type: none">- only in case of evident infringement- no specialised Public prosecutors <p>Customs</p> <ul style="list-style-type: none">- <u>Import</u> and Export IP control	<p>Criminal proceedings</p> <ul style="list-style-type: none">- uncommon <p>Customs</p> <ul style="list-style-type: none">- <u>Export</u> and Import IP control (10 years duration)



Special issues

A) Formalities

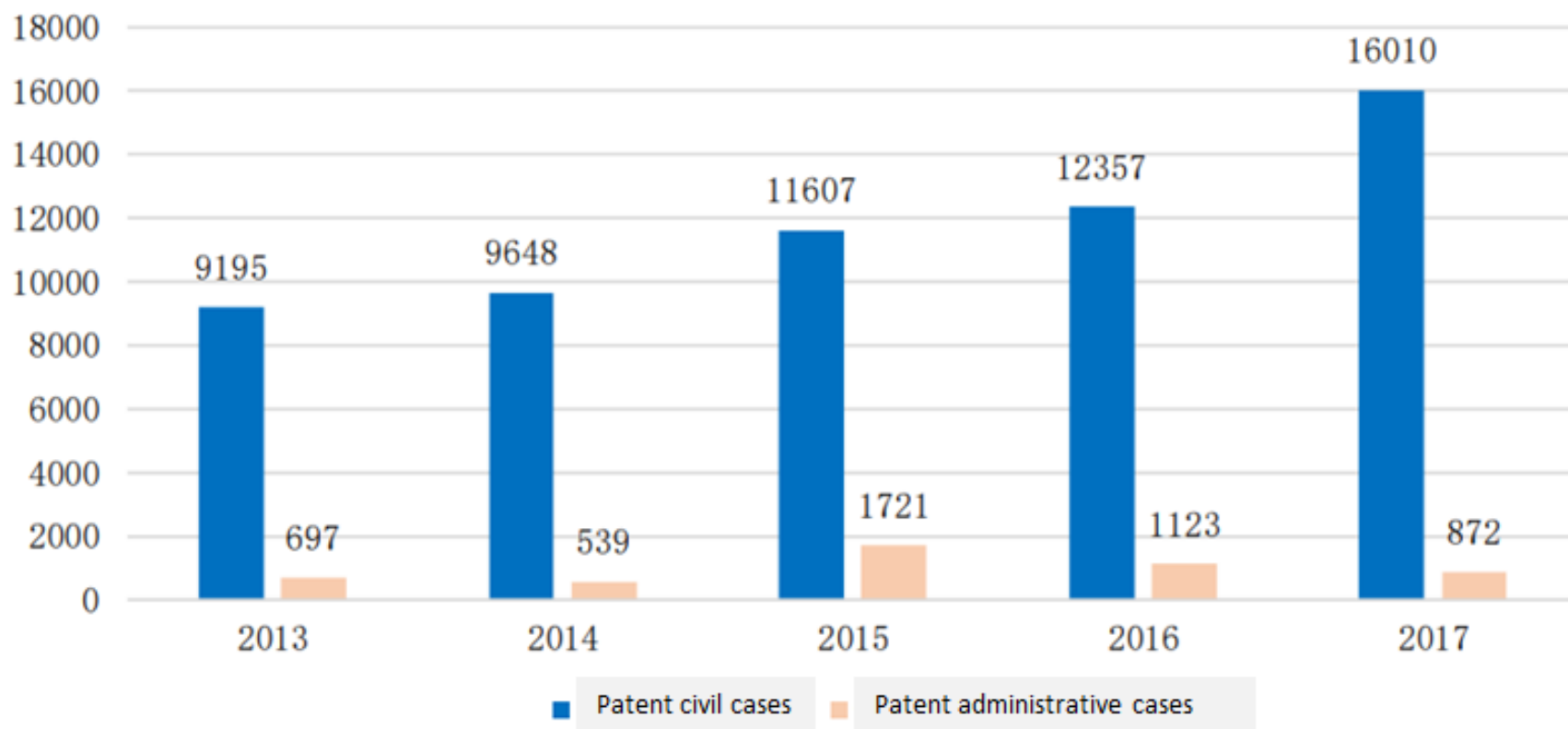
all documents shall be duly translated /notarized

B) Only the granted rights can be enforced

need to file Patents / Utility Models / Design timely

C) Choice between the Administrative / Civil procedure

Figures

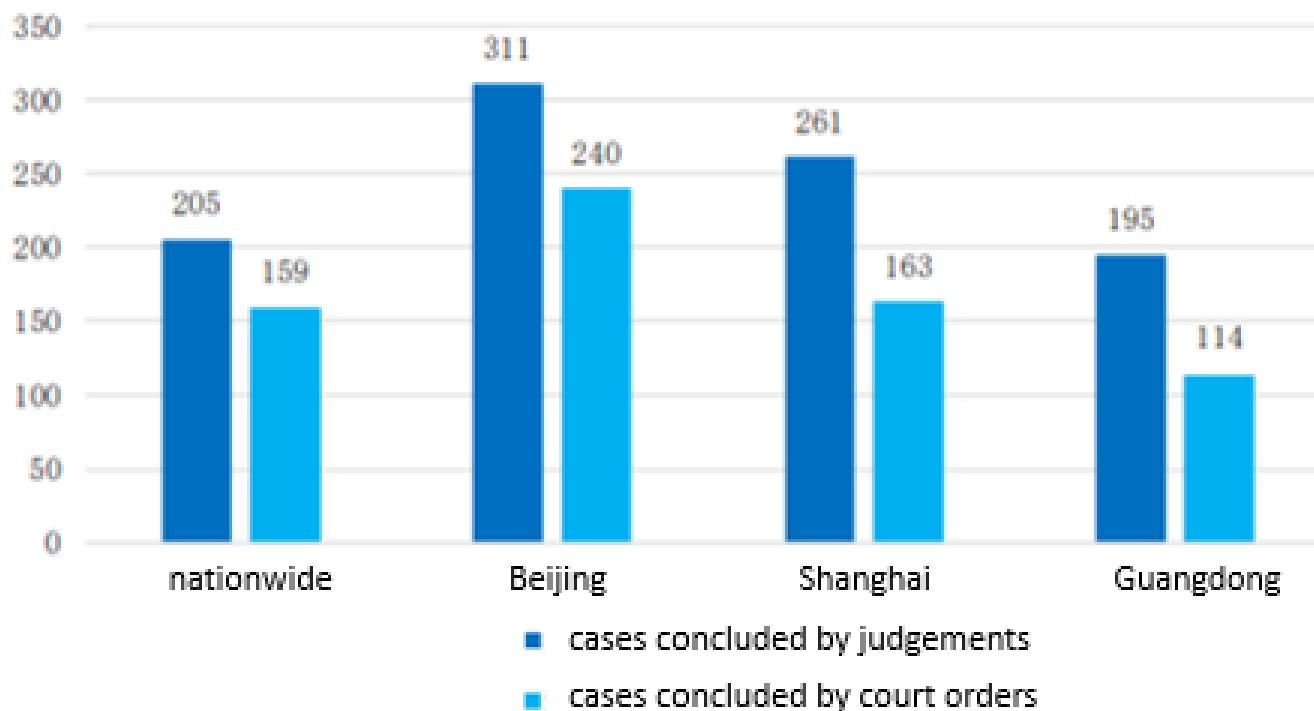


<https://trustinip.com/latest-status-and-trend-of-patent-litigations-in-china/>



Figures

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

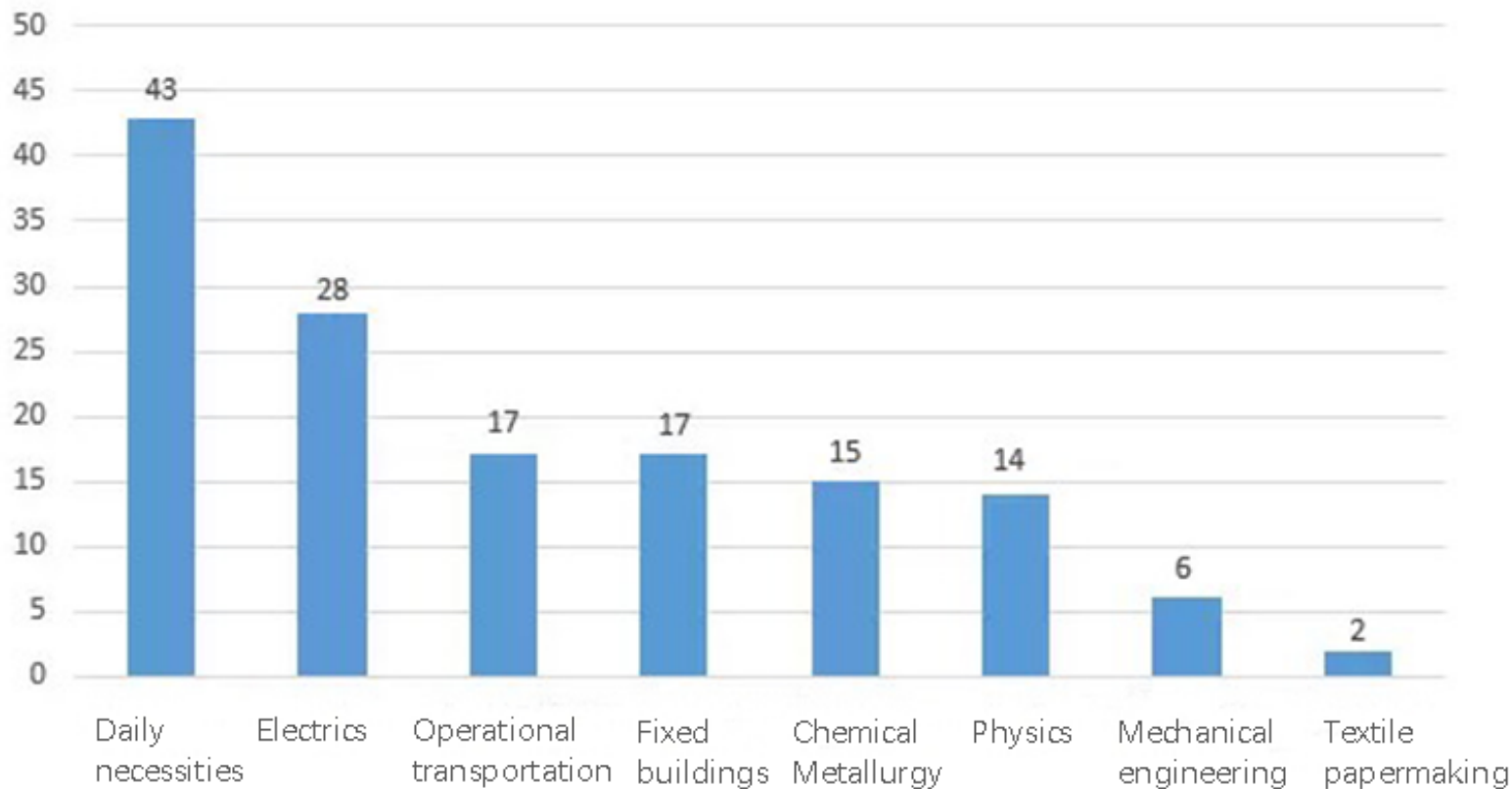


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Figures

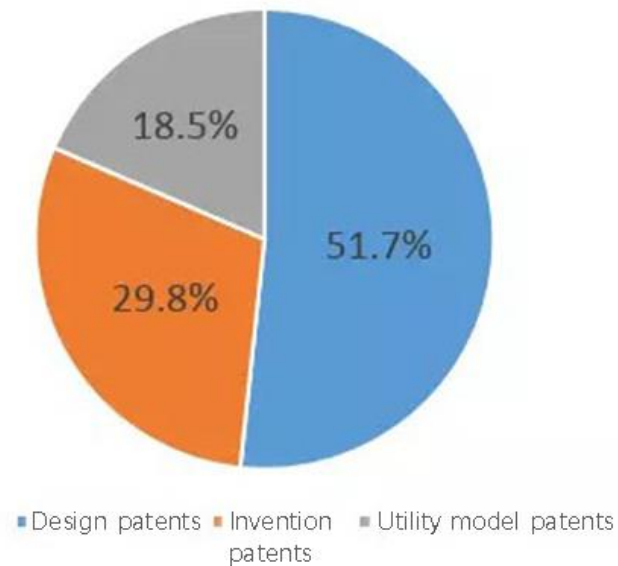
Patent civil disputes



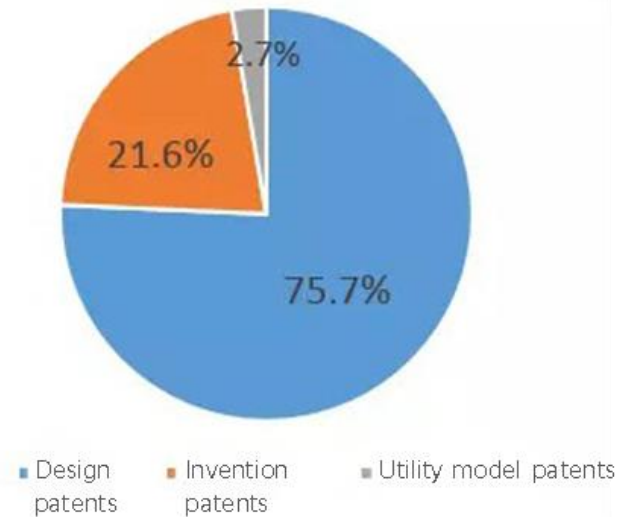
<http://www.san-you.com/English/a/9635.htm>

Figures

Types of patent rights of patentees in China mainland



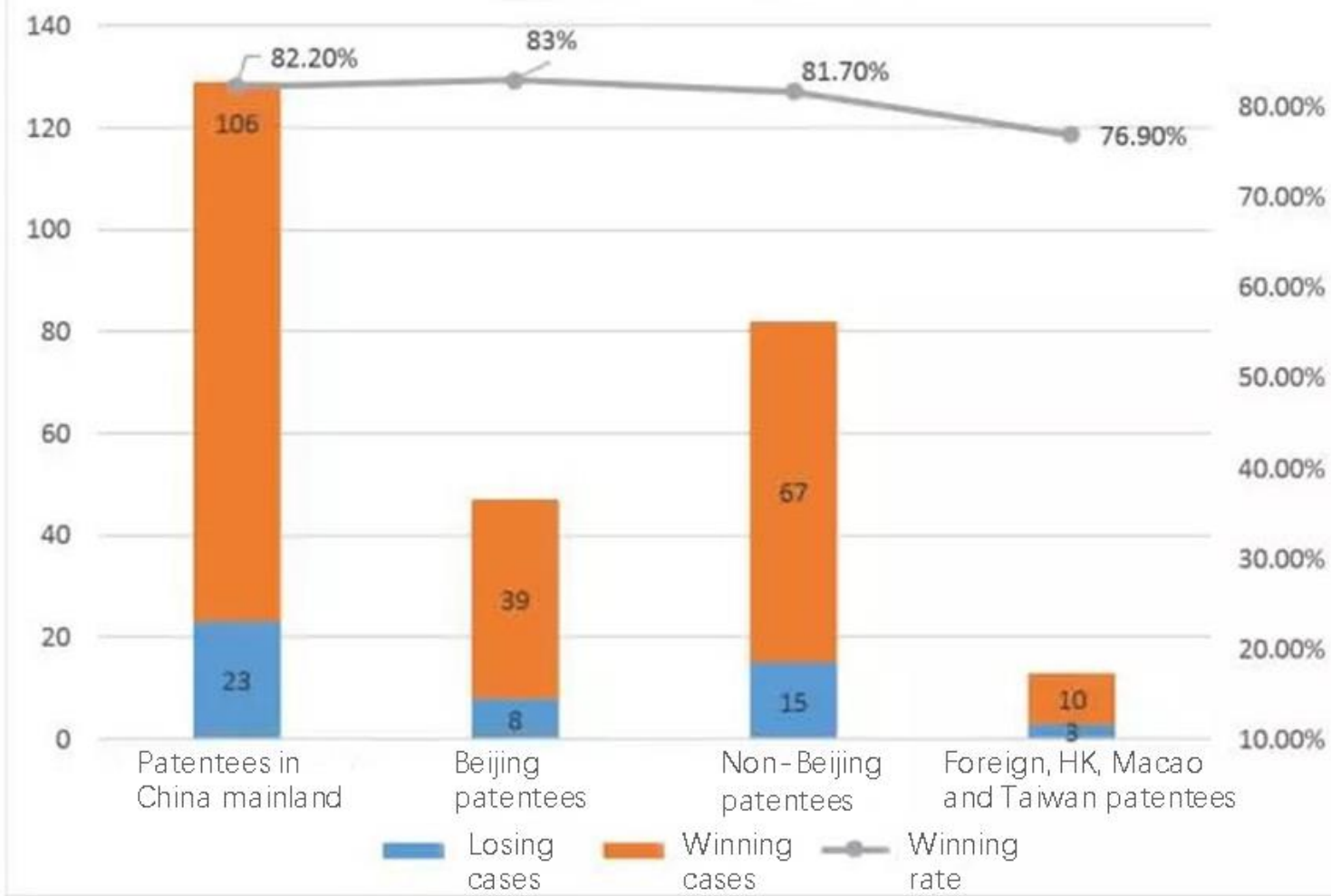
Types of patent rights of foreign, HK, Macao and Taiwan patentees



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

Figures

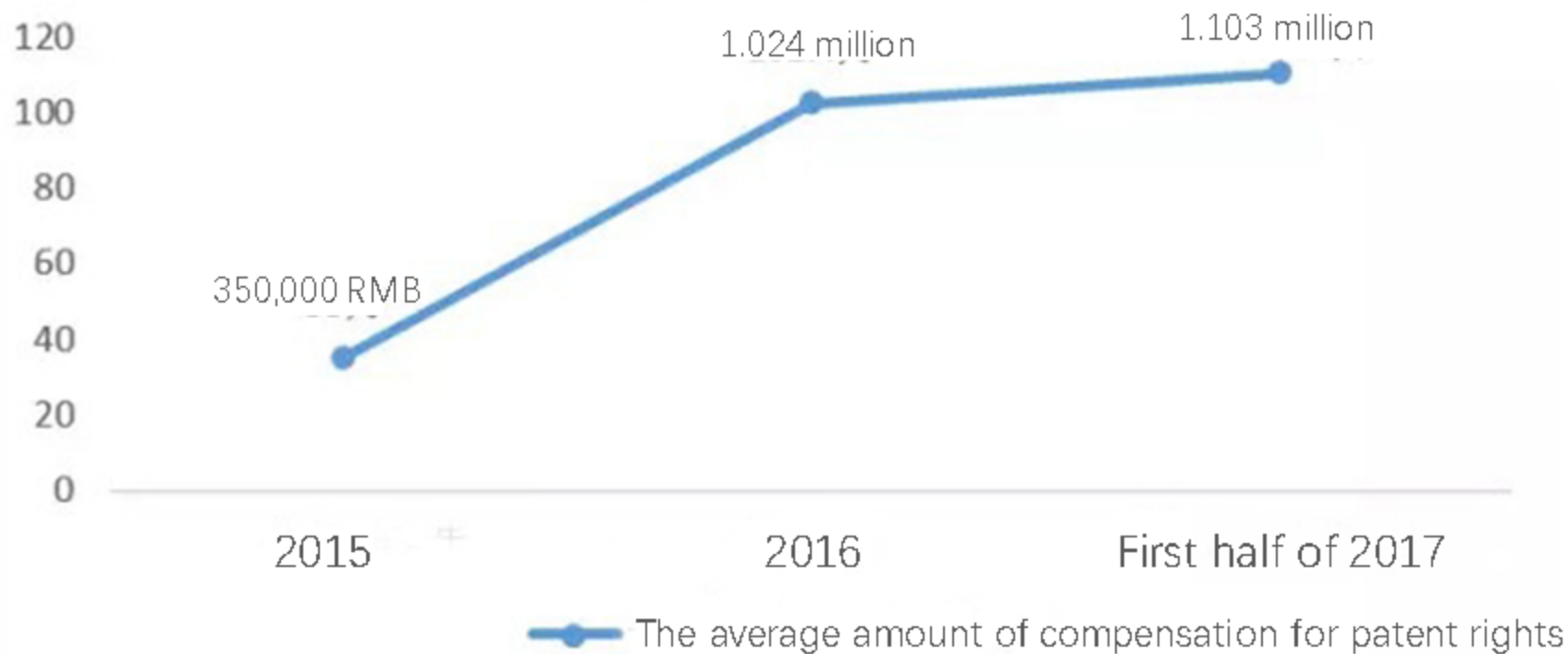
The winning rate for patent disputes that end with court judgments



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

Figures

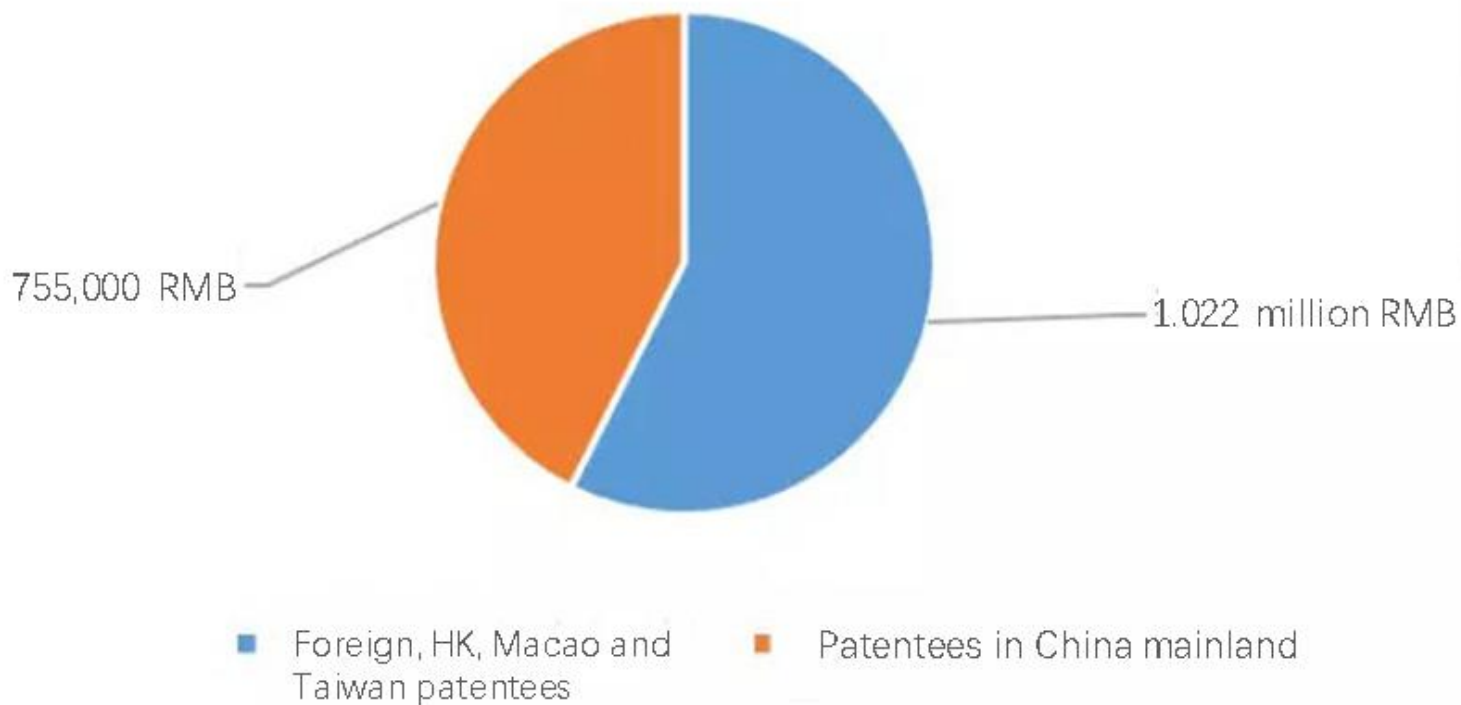
The average amount of compensation for patent rights infringement



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

Figures

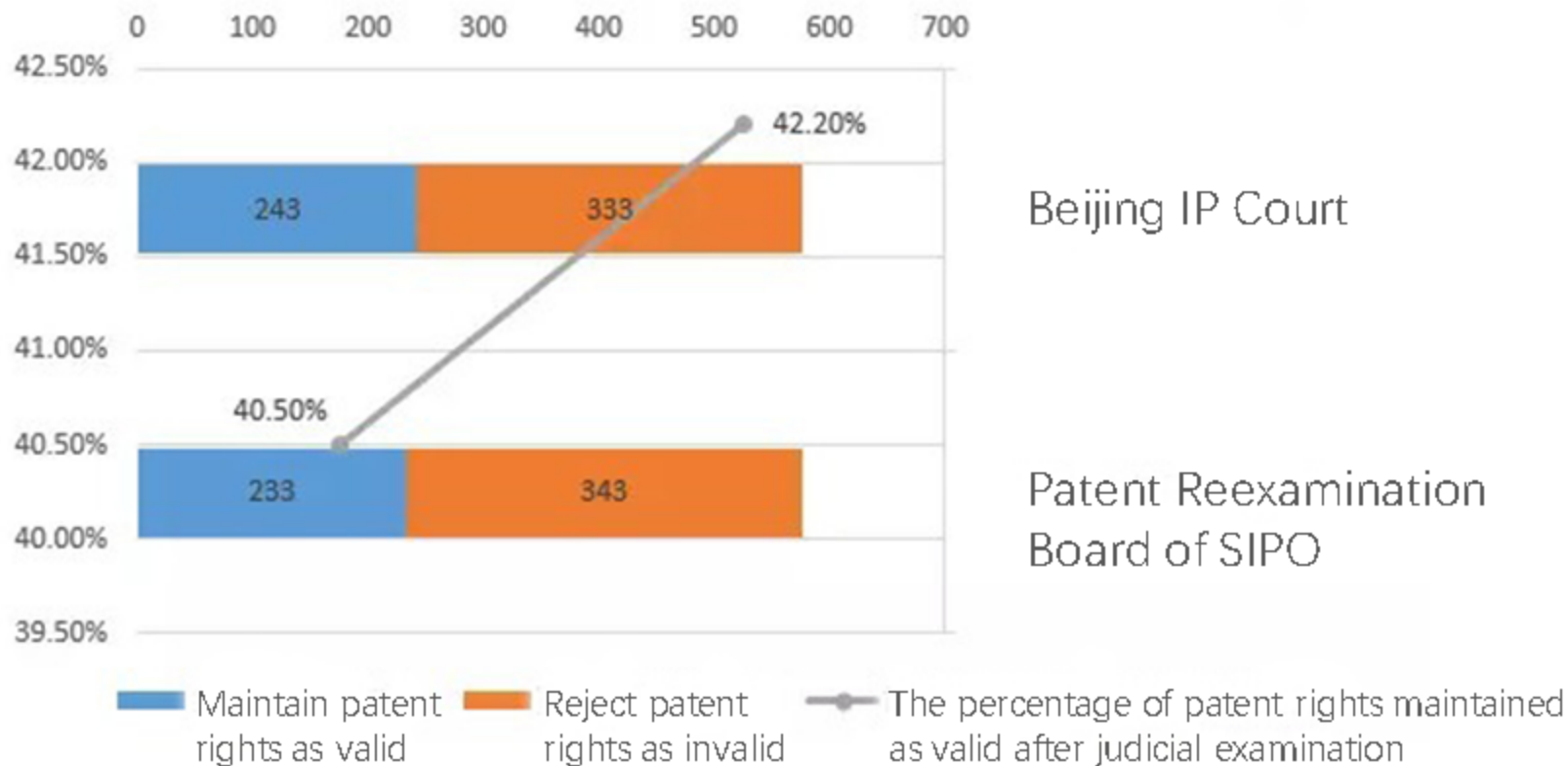
Average amount of compensation granted by courts



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

Figures

Judicial examination on patent invalidation



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

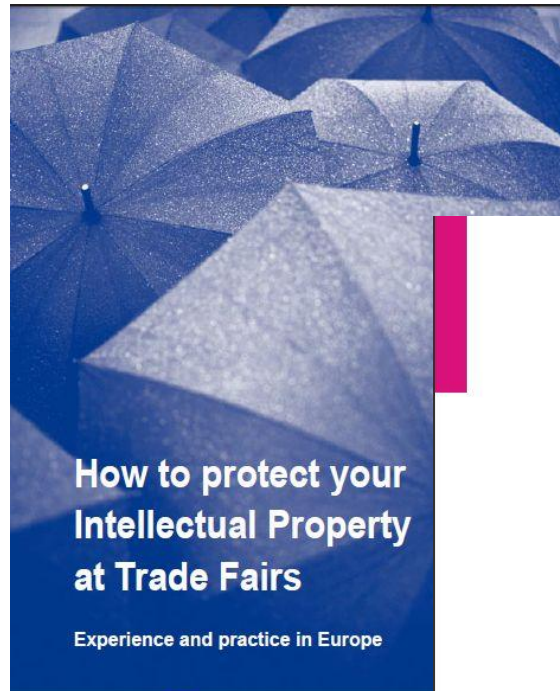
Trade fairs



EU-CHINA PROJECT ON THE PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS (IPR2)
中国－欧盟知识产权保护项目(二期)

Study IPR2
2009

www.ipkey.eu



中华人民共和国商务部



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EU-CHINA
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知识产权保护项目

Roadmap
for Intellectual
Property
Protection
in Europe



**IP Protection
at Trade Fairs
in Europe**

Suggested for use by exhibitors at trade fairs,
particularly new entrants to the EU market



EU-CHINA PROJECT ON THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS (IPR2)
中国－欧盟知识产权保护项目(二期)

English > [Activities & Results](#) > [Enforcement](#) > EU-China study tour on IP protection at Trade Fairs in Europe

EU-China study tour on IP protection at Trade Fairs in Europe

15-23 November 2008, Germany, France, Italy



IPR2 supported a study tour to France, Germany and Italy to assess first hand the methods and practices of **IP protection and enforcement** employed at several of the largest **European trade fairs**. The delegation included officials from the Ministry of Commerce, both central and provincial departments, the Supreme People's Court, the State Intellectual Property Office. In each of the three countries, the delegation met with Judges, Procurators, Police and Custom authorities, and also with trade fair organisers and industry associations. The **legal and criminal procedure** in force were presented and analysed, also pointing out procedural differences between the European countries and China.

Trade fairs organisers showed their best practice, with specificity for each trade fair, given that different methods have been developed by the major trade fairs over time. Particular solutions in place at some trade fairs, to assure a rapid intervention in the case of an IPR conflict amongst exhibitors were also presented, and included the practices at Basel in Switzerland. European industry also intervened to present practices in managing IPR and licensing.



The Study Tour allowed for a broad range of discussions, covering the different dimensions and challenges in protecting IPRs at trade fairs and exhibitions; and allowing a first-hand view of the different perspectives and various practices at the major trade fairs in Europe.

The protection of IP at trade fairs continues to be an important area of intervention for MOFCOM, and for support by IPR2. Building on the study tour, and with the learning from the expert exchanges, the support in this area can be extended. The possibility of providing manuals of procedures and methods for enforcement officials and e-learning material is being considered in order to reinforce training support to industry.

Study Tour

FRANCE – GERMANY - ITALY



EU-CHINA PROJECT ON THE PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS (IPR2)
中国－欧盟知识产权保护项目(二期)

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Protecting IP at Trade Fairs, information and mediation support

3-8 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.

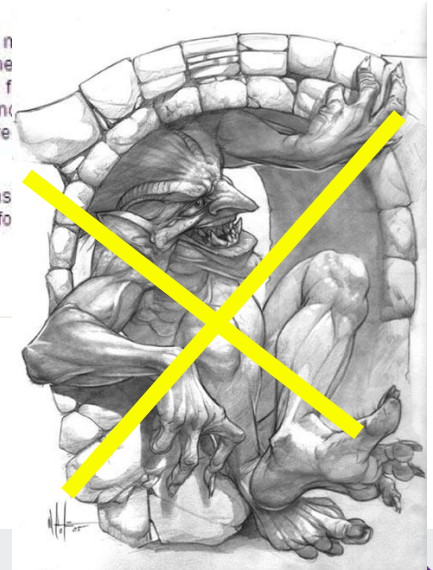
This 'China IPR Desk at CeBIT' provided an information and professional assistance in reaching an equitable solution for companies in support of their efforts to better protect the (including the German authorities, the trade fair organisers and

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



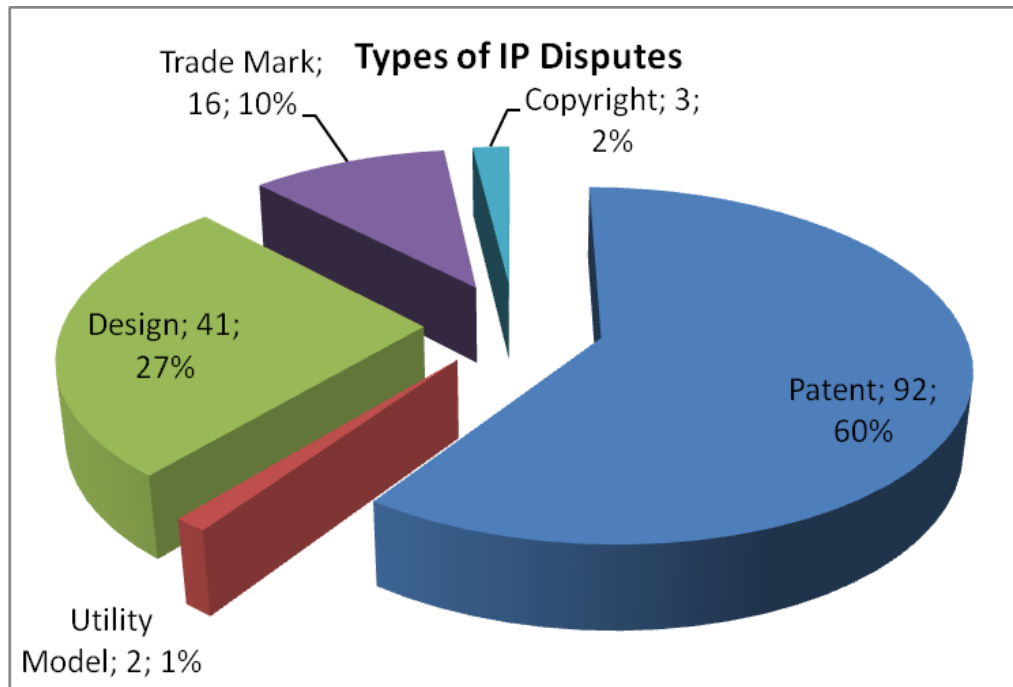
In the course of the trade fair days, the China IPR Desk at CeBIT addressed a total of 48 cases were related to preliminary measures, Bailiff enforcement notices, warning letters and info and IP protection in Germany and Europe in general).

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



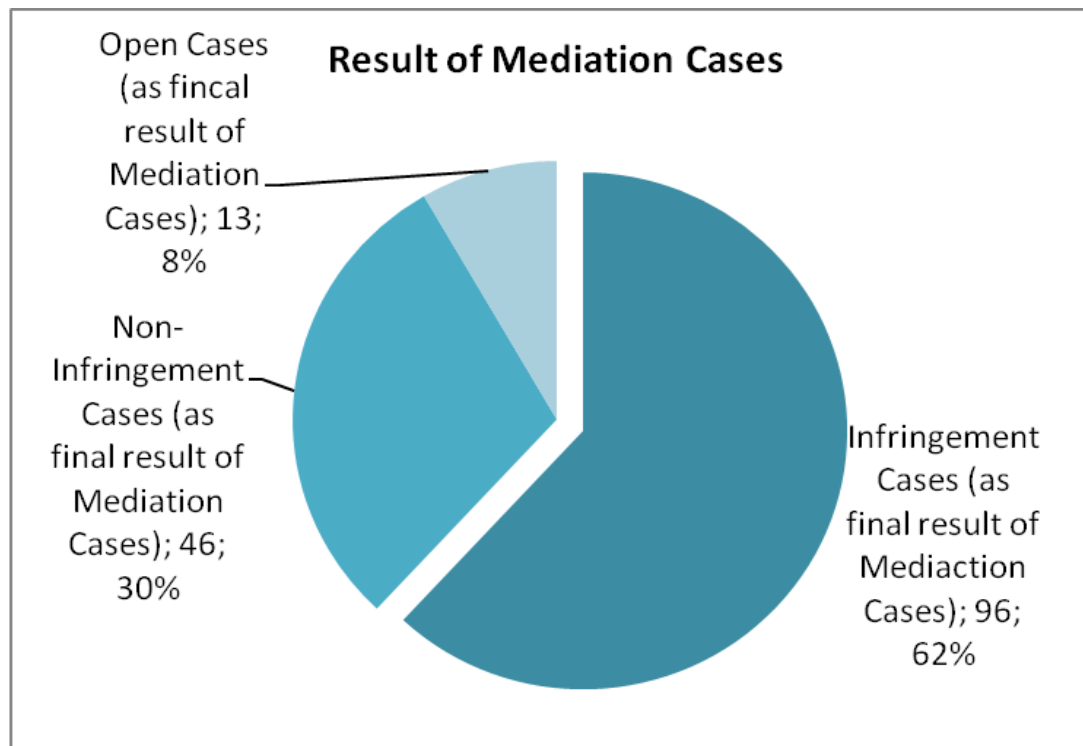
Germany

CeBIT 2009/2010/2011 (**Hannover**), Industriemesse 2009/2010/2011 (Hannover), IFA 2009/2010 (**Berlin**), Schweissen & Schneiden 2009 (**Essen**), Light & Achitecture 2010 (**Frankfurt**). From March 2009 to May 2011 the service has been provided ten times for these trade fairs.



Germany

CeBIT 2009/2010/2011 (**Hannover**), Industriemesse 2009/2010/2011 (Hannover), IFA 2009/2010 (**Berlin**), Schweissen & Schneiden 2009 (**Essen**), Light & Achitecture 2010 (**Frankfurt**). From March 2009 to May 2011 the service has been provided ten times for these trade fairs.



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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