

## China's Growing Constellation in the Global IP Sky

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A year in China speed might as well be years, perhaps even decades, in other nations. In just one year from 2009 to 2010, China climbed from sixth place to fourth largest patent filer in the world under the Patent Cooperation Treaty ("PCT"). China filings increased a whopping 56.2% from 2009, making it first in growth rate. In 2010, new patent applications filed by Chinese domestic companies in SIPO exceeded the one million mark. China's growing constellation in the global IP sky is shining bright.

The dizzying growth in patent filings in China shows little signs of slowing down. According to SIPO Commissioner Tian Lipu, "By the end of the 12th Five Year Plan (2011-2015), invention applications received by SIPO every year are expected to double over the current number. More companies will have their own patents and [intellectual property rights]."

In a country that recently became the second largest economy in the world, surpassing Japan, IP remains a key focus of China's growth and increasingly competitive standing in the international marketplace. In February, President Hu Jintao called for improved social management and innovations to "ensure a harmonious and stable society full of vitality," stressing the need "to safeguard people's rights and interests, promote social justice and sustain sound social order." It still comes as a surprise that China is a hotbed of IP litigation with over 30,000 civil IP cases filed in 2009 alone. The majority of cases relate to copyrights and trademarks, but there are also significant numbers of patent, technology contract, and unfair competition cases.

As China's IP assets grow at unprecedented speed, companies should pay attention to several important issues in doing business in China as well as building and enforcing IP jewels.

**File Early.** Companies doing business in China can no longer afford to ignore the need to procure IP rights in China. China IP assets are growing by leaps and bounds. Chinese domestic companies dominate about 90% of patent filings at SIPO. As those applications mature into patents, foreign companies could face substantial vulnerability with respect to IP. Especially in a first-to-file country, which rewards early filers, companies doing business in China would be well advised to file application early before it's too late.

**Focus on Quality.** Not all patents are created equal—some are definitely better than others. In the early stages of a company's and an industry's development, there may be more focus quantity rather than quality of patents. Even during a period of dramatic patent-filing increase, however, it is important to keep focused on quality of patents. A weak patent that is not valid or an unduly narrow patent that does not cover a competitor's product may become worthless. Thus, it is important to think strategically about the essence of the invention and how to achieve strong patent protection that withstands future validity and noninfringement challenges. Focus on quality and build a strong, effective IP war chest.

**Avoid Infringement.** As important as it is to build your own IP assets, it is equally critical to avoid potential infringement of a third party's IP. The planning should start at the earliest stages of market research and product planning. Waiting until products are rolling

off the assembly lines in preparation for market launch may be too late. During those later stages, it is often much more difficult, more expensive, and more time consuming to modify an existing product to design-around third-party IP rights. It pays to start thinking about IP early in product planning, and rethinking and reanalyzing third-party IP rights periodically as new patent applications are filed in great numbers and with great speed.

**Prevent IP Loss.** One can lose tremendously valuable IP for several reasons. Filing too late is certainly one reason. Preparing weak applications is another, e.g., providing insufficient disclosure or improperly claiming too little or too much. Another reason is inaction or lack of oversight of your own employees. Implementing sound IP procedures to maintain confidentiality of company information, including R&D efforts, and securing proper ownership to ensuing IP rights are critical in developing and maintaining a valuable IP portfolio. Preventing IP loss cannot be overemphasized in a country like China where R&D investment continues to rise and the focus on technological advancement gives rise to fast-growing IP.

As the level of IP activity in China escalates, so does the importance of early and strong IP protection in China. Doing so will ensure that you join China's growing constellation in the global IP sky.

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