

PATENT PROTECTION IN CHINA

THE CHINESE IP SYSTEM CONTINUES TO IMPROVE

They say it takes 20 years to build a reputation and five minutes to ruin it. Case in point: China has significantly improved its intellectual property system over the last 20 years, yet it is still trying to overcome its reputation for piracy and counterfeiting. Although China's piracy and counterfeiting problem has not been completely eliminated, China's IP system has now matured to a point where patents can be obtained and enforced there.

Upward trend

As a result of several iterations of its IP laws, the climate for technology ventures in China has significantly improved. China's patent office was established in 1980, and its first patent laws were enacted in 1985, with subsequent revisions in 1992, 2000 and 2009. The Chinese patent office (the State Intellectual Property Office of the P.R.C., or SIPO) now employs approximately 4,000 people. In 2009, SIPO received almost 1 million new patent applications, more than any other patent office in the world. China is also a signatory to and has consistently fulfilled its obligations to nearly all major international IP treaties. These improvements have resulted in a significant increase in the number of patent filings and patent grants for foreign applicants, which suggests that the legitimacy of securing IP rights in China is gaining worldwide acceptance.

Enforcement of patent rights

Notwithstanding the trend of foreign companies acquiring Chinese patents, many still question whether China's legal system is competent to enforce those patents. The Chinese IP enforcement system has also made progress in recent years. For example, patent owners may enforce their patent rights using

either the judicial system to obtain damages, or faster and less expensive administrative procedures to obtain injunctive relief. Also, in China's recent revision of its patent laws, plaintiffs can obtain damages for infringement based on lost profits and reasonable royalties. The legitimacy of China's patent enforcement system is also supported by the fact that approximately 90 percent of the more than

4,000 patent infringement lawsuits in China each year are filed by one Chinese company against another Chinese company. Still, to avoid local biases, it is best for foreign companies to bring infringement actions in China's larger cities, such as Beijing, Shanghai and Shenzhen.

The value of relationships

Protection of IP rights in China also depends on the people you work with. Choose your partners wisely. A strongly worded contract is not enough to compensate for an untrustworthy partner. Take time to establish a relationship with prospective partners, and to clearly

communicate your business expectations.

Also, choose U.S. patent attorneys who have close working relationships with Chinese patent attorneys and know their technical and legal capabilities. Having U.S. patent attorneys that speak Chinese and spend time in China can help.

With a population of over 1.3 billion people, and a GNP predicted to continue expanding over the next 20 years, China is an economic opportunity that cannot be ignored. Despite China's reputation for piracy and counterfeiting, a meaningful legal framework to obtain and enforce patents in China has evolved and is improving. Obtaining and enforcing patents in China should now be part of every company's intellectual property strategy. ■



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The views expressed are those of the author and do not necessarily reflect the views of Utah CEO.

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