

CHINA 華牌 BRAND®

IP STRATEGIES OF CHINESE COMPANIES

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Executive Summary

As China is further consolidating its global political and economic power, Chinese companies have increased their innovational capabilities and are steadily narrowing the gap of technological development.

Intellectual property plays a dominant role in China's innovation and globalization offensive. It is not a secret that many Chinese companies do not play by the rules of fair competition. They bypass intellectual property rights, register their own patents on a massive scale and build a huge wall of property rights – an effective strategy to block the competition.

In their attempt to use patents as a form of protection, Chinese competitors show a certain strategic pattern. Western companies need to take China's IP offensive very seriously in order to secure their success. Gathering relevant information about their competitors is the most powerful countermeasure.

The Role of IP in Chinese Competition

Competing internationally with Chinese companies often resembles a soccer-match in which only one team is doped, while the other team is clean. Many Chinese companies receive generous political and financial backing by the Chinese government when entering international markets, which results in a massive shift of the overall global competitive advantage. In the frame of special development plans, companies that already have a clear competitive advantage are given additional preferential support. The idea behind this strategy is to further boost a company's strengths, and not to eradicate weaknesses. Chinese companies invest in special products, produce high technology at low costs and henceforth, undermine traditional profit models.

Companies bypass intellectual property rights, register their own patents on a massive scale and build a huge wall of property rights designed to block the competition. Therefore, intellectual property plays a dominant role in China's innovation and globalization offensive. In the course of various strategies and programs, the government promotes national and international patent filing of Chinese companies with tax breaks and subsidies. The support of key industries, large investments in research and development as well as taking influence on standards is aimed to increase the competitiveness of Chinese companies and create a dominant position in global markets. China is keen on gaining market dominance – not only politically but also economically. Hence, Chinese companies have caught up in terms of research and development and are steadily narrowing the gap of technological development. By investing abroad, many Chinese companies are increasingly seeking access to foreign technology. When it comes to the protection of their own technology, the registration of patents has become the favored strategy to do so. Here, some strategic patterns have become quite obvious.

Strategy 1: Fast Registration

Chinese competitors know that time is money – even in the case of property rights competition. They always keep track of their competitors' new products and technologies and analyze them closely. If a company has not registered yet the rights to protect its technology, Chinese competitors make sure to quickly fill the gap and register the rights for these products. Usually, patent applications by manufactures can take up several years, which is far too long. Furthermore, Chinese counterfeiters always keep their eye on foreign brands and trademarks.

A telling example for the fast registration by Chinese competitors is the electric car Smart ForSpeed of Daimler's subsidiary brand Smart in 2011. Shortly after having copied Smart's car design, the Chinese manufacturer Nanjing Jiayuan submitted its draft to the patent office.

Strategy 2: Registration of Utility Models and Design Patents

Most patents filed in China are new utility models or designs, which do not require great technical innovation. They are particularly popular among Chinese applicants since they are easier and faster to prepare, do not have to undergo substantive examinations before being granted and cost less. Utility models and design patents make it easier for Chinese competitors to claim prior art faster than their foreign counterparts, who typically rely on formal invention patents.

Strategy 3: Short-term Infringement

Another time-based strategy is to violate competitors' intellectual property rights temporarily. Counterfeiters try to avoid detection as good as possible. Once exposed, the counterfeiter immediately stops his violations if the manufacturer has taken legal action. In industries with very short technology cycles, quick countermeasures can prevent a company from huge damages.

Strategy 4: Extensive Registration

In order to guard their innovations from potential threats, some Chinese companies apply for as many intellectual property rights as possible. A common practice – even for smaller changes or improvements of their products. The result has been the increase of so-called "junk patents". Such patents do not necessarily have to include any new developments; instead, they increase the legal uncertainties for all parties involved. The huge extent of applications makes it difficult for a U.S. company to decide on a nullification of Chinese intellectual property rights. The fact that the SIPO does not offer online research for foreign companies, since Chinese patents have no relevant English translations, makes it even more difficult. Since the issued claims cannot be searched on an electronic base and in a timely manner, undetected patents can pose a serious threat to Western companies willing to invest in China.

Strategy 5: Registration in Chinese

Another common practice is to register the Western brand name in Chinese characters, to ensure a similar pronunciation. This strategy facilitates an application to fly under the manufacturer's radar. Such violations are extremely difficult to detect. This includes the use of Chinese domain names as well.

Strategy 6: Exploiting Legal Loopholes

An example from the chemical industry: Only those products from manufacturers that have included test data in their patent application can be considered patentable. As a result, the substance of Western companies cannot be patented, even when they have disclosed the structure and the production process, if the test data is not attached to the application. Chinese competitors, however, use the technology to conduct further experiments, and then provide the data to apply for a patent. For Western manufacturers, the commercialization of the substance is blocked in China.

Strategy 7: Analyzation, Modification and Protection

Many Chinese companies analyze Western original products, slightly modify them and register for intellectual property rights of the modified copies. This method is also used for design patents and utility models where no examination is undertaken. In China, this is a widely used practice. When it comes to the research and improvement of patented technology, Haier even once commented: "Even though you're not the giant, you are bigger than the giant when you are standing on his shoulders."

Strategy 8: Outsourced Copying

A smart strategy for the theft of intellectual property is to outsource the infringement of property rights. By employing a Chinese supplier with the production of an infringing component, the infringer will not put his own “head in the noose” if the violation was outsourced.

Strategy 9: Registration of Malicious Trademarks Abroad

Investigators of the German Patent and Trademark Office (DPMA) usually do not conduct research on prior conflicting marks when a new trademark application is filed. Chinese counterfeiters increasingly benefit from this loophole and apply for malicious trademarks which can hardly be distinguished from Western original trademarks.

By adopting this strategy, counterfeiters can legally export their fakes and offer them on the German market. The registration of their trademarks in Germany is used to fortify the legality of their malicious trademark use in China. With a German trademark certificate at hand, the counterfeiter can defend himself easier against the original brand owner when brought to the Chinese courts and authorities.

How Western Companies Should React

In the light of China's IP offensive, Western companies sit on a ticking bomb. If, for instance, Chinese suppliers register property rights in the USA in areas of key technologies, they can block the American companies' access to their own home market or export markets. Moreover, it is possible that US manufacturers infringe upon Chinese patents, even though they have guaranteed their customers not to do so. Many supplier contracts include a clause in which the manufacturers assure not to violate on any foreign property rights.

Western industrial companies have to respond to the Chinese surge of patents appropriately. They require crucial information: Which Chinese competitors can block them in their home market and export markets? Which IP-related weaknesses can competitors exploit? What are their IP strategies and IP tactics? What types of technologies, innovations and rights do they already have? Are there any registrations in bad faith that can be successfully controlled through nullification proceedings?

The solution to this information asymmetry is IP Competitive Intelligence: the systematic identification, analysis, and evaluation of Chinese competitors' IP, their new developments, registered rights, technologies, and strategies. Many companies only conduct such competitor analysis when in serious jeopardy – too late for countermeasures. Such a blind flight can be prevented if a company is aware of the technology and patent strategies of its Chinese competitors.

There are many ways to gather information about Chinese competitors. Conventional approaches use information that was disclosed by the competitor in brochures, technical data sheets, financial reports, press articles, etc. More advanced approaches track Chinese patent activities, associated but non-competitive businesses in China, Chinese associations, etc.

Knowledge is Power

According to the Chinese military strategist Sun Tzu, knowing one's enemy and his plans is crucial for winning the battle. His maxim: avoid long-lasting and expensive fights by owning in-depth and profound information. Gathering relevant information about the enemy is the key to success. Chinese companies take the teachings of Sun Tzu very seriously.

The challenges many Western companies have to face now are quite obvious. Therefore, the first step has to be a detailed identification and analyzation of the registered intellectual property rights of both Chinese competitors and counterfeiters. The main rules are:

- Search for Chinese patents in databases in Chinese language. Translation, analyzation, and evaluation of the contents
- Creation of patent maps and landscapes
- Paying attention to details
- Consideration of threatening Chinese intellectual property rights
- Identification of the competitor's IP strategy, patent-related behavior, and current development
- Systematic monitoring

A patent search is, generally speaking, the first step to gain competitive intelligence. Patent information provides valuable insight into Chinese competitors' activities and reveals new emerging players. Patent search can help to monitor the strengths and weaknesses of a Western company and to get insights into the technologies of the Chinese competitors. By examining the Chinese patent landscape, Western companies can use the R&D strategy of their Chinese competitors as a benchmark and derive strategic issues from this patent information.

Important information includes the issuing date of a patent, its scope, the depth of its claims, gaps and obvious weaknesses in the own patent portfolio as well as resulting legal risks. Western companies need to investigate Chinese competitors' targets as well as their strengths and weaknesses. In some cases, such a review can pave the way for potential alliances. A detailed analysis can identify licensees and negotiate income generating licenses for the company. It can also identify Chinese companies that are infringing upon own IPR, encourage and negotiate with them to license the technology. Finally, patent analysis can be used to find those in charge of a company's innovation – decisive information in the fight for new talents.

When analyzing Chinese patents and trademarks, a qualitative method provides in-depth insights into the particular document. A quantitative method requires translating and reading the whole document as well as to segment the key technical information into various clusters based on the taxonomy. This can turn into a very time consuming process. Due to the characteristic features of the Chinese language, it is often very hard to translate the technical terms into English corresponding terms. Therefore, cooperating with specialized IP and patent consultants can prevent from wrong or unclear translations. Besides, the clustering or categorizing of information plays an important role. US companies should maintain two parallel structures – a generic structure, which is categorized by technology, and a specific structure, dealing with the company's products. By capturing both perspectives, managers are better equipped to identify risks and make the right decisions. In order to search Chinese patent documents, keywords in Chinese characters need to be collected.

The Importance of Patent Mapping

After searching for documents, analysts need to collect the relevant keywords from Chinese patent documents which are then merged with the initial keywords. This is how a company can create keywords lists and query formulation, refine the subject continuously and improve the search strategy. This procedure is followed by patent mapping. A patent map provides a detailed picture of the competitive environment and main competitors, and moreover, helps to identify a company's own patent gaps. It visualizes the complex patent landscape bar graphs, polygonal line graphs, pie charts, radar charts, etc.

It is advisable to include patent mapping from the very beginning and to conduct it on a frequent basis, since landscapes are dynamic and always changing – especially in China. It is easier to update a patent map than to re-create it after a longer time. Furthermore, the context defines to what extent Chinese patent landscapes need to be explored. In many cases, only particular product specifications are relevant.

Typical categories in patent maps include the technical focus and diversification, patent classification codes, inventor monitoring, trends of development, geographical distribution, and future markets. As Chinese companies often cooperate with universities and research institutes, the

content of a China-related patent map should include the competitors, associations of companies, as well as universities and their associations.

Conclusion: Attention Pays Off!

German companies must at all times have an eye on their own IP rights as well as on those of their competitors. Optimal protection against China's IP offensive can only be ensured with a comprehensive protection of their own IP rights, an early detection and eradication of vulnerabilities regarding the protection of IP rights, and in the meantime, careful monitoring of the competition, the registration of IP rights in relevant areas as well as the market in order to track down counterfeiters.

Chinese native speakers as well as experts on IP and the industry are crucial for sound research results. The evaluation of findings requires professional know-how, too.

With professional means, Western companies can brace themselves for the innovation offensive from China and the Far East and protect their own interests in good time.

Further Information

Find further information on our services on the IP strategies of Chinese companies here:

Flyer Intellectual Property Competitive Intelligence

<https://www.chinabrand.de/de/innovation-und-wettbewerb.html?file=files/content/de/kompetenzen/innovation-und-wettbewerb/Intellectual-Property-Competitive-Intelligence.pdf>

Flyer Research and Analysis of Chinese Patents

<https://www.chinabrand.de/en/competencies/intellectual-property-and-know-how.html?file=files/content/en/competencies/intellectual-property-and-know-how/Research-and-Analysis-of-Chinese-Patents.pdf>

Flyer Investigations in China

<https://www.chinabrand.de/en/competencies/compliance-and-data-security.html?file=files/content/en/competencies/compliance-and-data-security/Investigation-in-China.pdf>

Video (in German language) Research and Analysis of Chinese Patents

<https://www.youtube.com/watch?v=7QOWvJsBEqQ&t=166s>

Video (in German language) Counterfeiting and Piracy in China – Trends und Counterfeiters' Strategies

<https://www.youtube.com/watch?v=wBwECsY60vg&t=3s>

Video (in German language) Combatting Counterfeiting and Piracy in China

<https://www.youtube.com/watch?v=f3EcR7bQq8Q&t=1s>

Blog article Fourth Industrial Revolution: Asian Companies Leap Forward

<https://en.blog.chinabrand.de/2018/01/04/fourth-industrial-revolution-asian-companies-leap-forward/>

Blog article China's Fast-Track for Patents

<https://en.blog.chinabrand.de/2017/09/14/chinas-fast-track-for-patents/>

Blog article Counterfeiting Takes Off

<https://en.blog.chinabrand.de/2018/01/11/counterfeiting-takes-off/>

Blog article Will China Further Strengthen IPR Protection?

<https://en.blog.chinabrand.de/2017/08/08/will-china-further-strengthen-ipr-protection/>

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