
INTERACTIVE

New Product Introduction, China's Innovators, and The Great Wall of Patents

FACILITATOR

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SESSION ABSTRACT

The Chinese IP Offensive is picking up speed. Chinese companies are increasingly moving away from just manufacturing and starting to register patents and export inventions instead of products. The Chinese Patent Office State Intellectual Property Office, along with patent offices around the world, is being inundated with applications from the People's Republic of China – many of them based on ideas lifted from American and European companies. In this session, led by CHINABRAND CONSULTING's Alexander Gangnus, participants discussed how companies can protect their intellectual property in this new environment and keep the Chinese market open to sell and produce their products.

TAKE-AWAY: THE NEW WAVE OF CHINESE PATENTS

China is increasingly becoming the leader in new patent applications, Gangnus said. The country has already leapfrogged over the US and the EU in recent years and is projected to have two to three times as many patent applications per year as compared to the US and Europe within the next five years. This increase is being primarily driven by the Chinese government, with yearly patent application quotas being set and a country-wide push to go from "Made in China" to "Designed in China."

However, many of these patent applications are considered to be "junk patents." The Chinese patent office doesn't have a process in place to check for prior patents before confirming the legitimacy of new applications. Instead, the process only checks that all the proper documents are included. So, many companies, in order to meet their quotas, look in US or EU databases for technology that isn't currently patented in China, make minor changes in the drawings or processes, and submit their own patent application for the technology. Many of these patents are also established to set the stage for future licensing agreements or settlement negotiations. This strategy can force Western companies out of the Chinese market or block their access to it. Gangnus calls this strategy the "Great Wall of Patents"

One other issue is that the Chinese educational system focuses on rote memorization learning, rather than innovative thinking. While the government is currently setting up

science and technology incubators and sending students to Western universities to gain skills in innovation processes, the fruits of these activities are still about 50 years away. In the meantime Chinese companies are using acquisitions to acquire existing patents and know-how. In fact, virtually all Chinese acquisitions of German companies, for example, were done to gain legitimate access to current technology as well as future technology developments that can be patented in both countries.

BEST PRACTICES

The main remedy for non-Chinese companies that want to challenge infringing patents is to use the patent invalidation process. Essentially, this requires proving prior usage in your home country or other countries, including the application for patents, the production of the product, and any advertising or marketing of that product.

However, the main difficulty for companies is often determining in the first place if a product has already been patented in China one way or another before the company starts selling or producing there. Gangnus recommended performing the following steps to find and translate Chinese patents:

- Use an in-country, native-speaker consultant to do the research physically at China's State Intellectual Property Office (SIPO). Overall, very little patent information is available online, but the SIPO database can be searched.
- Never use machine translation tools for online searches.
- Look for indicators of ramp-up in certain technologies.
- Search for diverse terms for your product, such as "machine for assembling" in addition to the more standard "assembly machine" in order to find keyword changes that are used to hide patents.
- Match SIPO classification codes with US/EU classification codes to find patents in a particular area.
- Look for abbreviations of keywords and terms.
- Look for keywords that competitors are using.
- Look for synonyms. In Chinese, there are often several synonyms for one technical term.

TAKE-AWAY: PARTNER SMART

Many Western companies are attempting to partner with Chinese companies on research and development of new products. While it may be less expensive to have

R&D done in China, there are concerns, including inconsistent quality and the risk of intellectual property leaks. Often companies will try to cloak their final product by having partners only work on small portions of the overall product. Ultimately, this lack of transparency can be counter-productive since it limits the innovation learning for the partner (which could lead to them being a better R&D partner in the future) as well as the potential to identify problems that might occur when the parts are put together as a whole.

BEST PRACTICES

Companies should also include defensive techniques in their R&D partnerships with Chinese companies. For example:

- Use M&A-type techniques for finding trusted partners, including the use of investigators and due diligence techniques.
- Apply for utility models as quickly as possible in both the home country and China; later apply for an invention patent and lay down the utility model as soon as the invention patent is granted.
- Develop relationships with as many influential people in your industry in China as possible.
- Partner with companies that are trying to become multinational, instead of just meeting patent quotas.
- Get second and third opinions on market intelligence, looking for both similarities and differences. Remember that first-hand research (vs. online) is always necessary.
- Look for companies that have government relationships, particularly legal relationships. These companies will be better able to handle the negotiations and red tape involved in product development in China.
- Develop to international standards, such as IEC, making it possible to apply for patents in multiple countries.
- Develop as much of an IP foundation as possible in China, which could help with adjudication if the current partner proves unreliable.