

WEBINAR

IP PROTECTION IN CHINA

Considerations for innovative tech companies

13 July 2023, 10 am CET

CHINA
IP SME HELPDESK

法兰德斯
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CHINA IP SME HELPDESK



Alessandra Capriglia
Project Manager

alessandra.capriglia@china-iprhelpdesk.eu

The Helpdesk in a nutshell

- Free initial advice to SMEs
- Geographic coverage: 4 jurisdictions of China
 - Mainland
 - Hong Kong
 - Macao
 - Taiwan

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& Blog



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FACTSHEET


- 1. THE FACTS: Business in Mainland China for EU Companies**
 - Size of Market
 - Key INDUSTRY SECTORS
- 2. IPR in Mainland China for SMEs: BACKGROUND**
 - Intellectual Property Rights for SMEs: Why is this RELEVANT to you?
 - How does Mainland China's IP legal framework compare to INTERNATIONAL STANDARDS?
- 3. IP Rights in Mainland China: THE BASICS**
 - A. Copyright
 - B. Patents
 - C. Trade Marks
 - D. Geographical Indications (GI)
 - E. Trade Secrets
- 4. Using CUSTOMS to block counterfeiters**
- 5. Enforcing of rights**
 - Administrative actions
 - Civil Litigation
 - Criminal Prosecution
- 6. RELATED LINKS and Additional information**



**IP Factsheet:
Mainland China**


**CHINA
IP SME HELPDESK**

For free, confidential, business-focused IPR advice within three working days E-mail: question@china-ipshelpdesk.eu



Guide

1. Technology Transfer to China
2. Thinking of Transferring Technology?
3. What Can Companies Do to Protect Themselves?
4. SME Case Studies
5. Technology Transfer Checklist
6. Take-Away Messages
7. Related Links



**Technology Transfer to China:
Guidance for Businesses**

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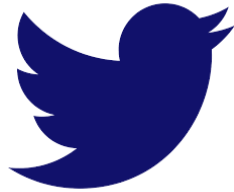
INTELLECTUAL PROPERTY ADVICE FOR YOUR BUSINESS



Six EU-funded helpdesks offer free resources to your small or medium-sized business to help you manage your intellectual property.

<https://ec.europa.eu/ip-helpdesk>

Stay connected!



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**European
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Flanders-China Chamber of Commerce / EU-China Business Association

Flanders-China Chamber of Commerce (250 members)



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IN COOPERATION WITH



- **Advice and expertise:** the FCCCVCKK tells you about the latest economic and trade developments via various publications and a weekly newsletter.
- **Meetings with Chinese delegations:** thanks to its extensive network the FCCCVCKK plays an important role in welcoming Chinese delegations to our country. We introduce Flemish entrepreneurs to non-traditional investment areas and help facilitate entering the Chinese market.
- **Exchange of experiences and sharing knowledge:** the FCCCVCKK regularly organizes conferences and round-tables on China so participants can exchange experiences, facilitate collaboration and create networking opportunities.
- **Privileged partner:** as the secretariat of the EU-China Business Association (EUCBA), the umbrella organization for all European China associations, the FCCCVCKK also plays an important role at a European level.

The membership fee for the 2nd semester of 2023:

Small and Middle enterprises: €238,00 (VAT excl.)

Large enterprises: €593,00 (VAT excl.)

Contact: http://www.flanders-china.be/en/about/join_fccc



CHINA IP Considerations for innovative tech companies

Valentin de le Court

valentin.delecourt@osborneclarke.com

13 July 2023



Valentin de le Court



Valentin de le Court
Counsel IP/IT/Data team
Belgium

valentin.delecourt@osborneclarke.com



Valentin de le Court has close to twenty years of experience in innovation-related intellectual property law, including four years of practice in China. His area of expertise covers contentious and non-contentious IP matters, with a focus on patent law, trade secrets protection and management, open innovation contracts, and China-related IP strategies. He has developed a diverse and original expertise in IP law, through years of practice at the Brussels bar, at a Shanghai based Chinese IP boutique, and within Belgium's largest IP firm. With a keen interest in innovation, he now focusses his practice on patent and trade secrets law matters, both as counsel and litigator. Valentin litigates patents in court, advises on R&D collaboration agreements and projects, performs trade secrets audits, and provides guidance on the protection and management of confidential information. His practice also covers trademark law (advice, contracts, and litigation).

THE TOPIC

IP Considerations for innovative tech companies

- *"China is aiming at becoming more self-reliant in science and technology. From an IP perspective, more challenges may occur for innovative SMEs.*
- *Acquainting the players in the tech sector with possible implications, while also supporting them with the toolkit needed to remain competitive in the Chinese market, is the aim of this webinar.*
- *Valentin De le Court, IP expert of the China IP SME Helpdesk will deliver a training on how to navigate the changing business environment technology in China, and how to best protect your intangible assets and guarantee your success in the market.*
- *The webinar is organized by the China IP SME Helpdesk in cooperation with the Flanders-China Chamber of Commerce."*

Agenda

I. IP in China – The Context

II. How to Protect your Intellectual Property in China

III. Lessons Learned

1

*IP In China –
The Context*

#1 – EVOLUTION OF IP LAWS IN CHINA

1°. In **LESS THAN FOUR DECADES** → from no man's land to top national priority



2°. A **WIPO member** + part to all main **IP international treaties and agreements**



- **Convention d'Union de Paris - 20 mars 1883**
- **Berne Convention for the Protection of Literary and Artistic Works - 1886**
- **Patent Cooperation Treaty - 19 June 1970 ('PCT')**
- **TRIPS Agreement** (Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce) – **15 April 1994**

3°. **A COMPLETE SET OF CHINESE IP LAWS IN PLACE** (legislative dynamism; major amendments of all IP laws between 2017-2021; 4th amendment of CN patent law in effect on June 1, 2021; TM law under revision in 2023)

#2 - China is the No. 1 country for PATENT applications

- 1.101.864 CN invention patent applications in **2015** (+18.7%)
>< 279 000 EP patent application in 2015 (+1,6%)
- 'WIPO Indicators 2016': China makes the headlines (FT Nov.24, 2016)

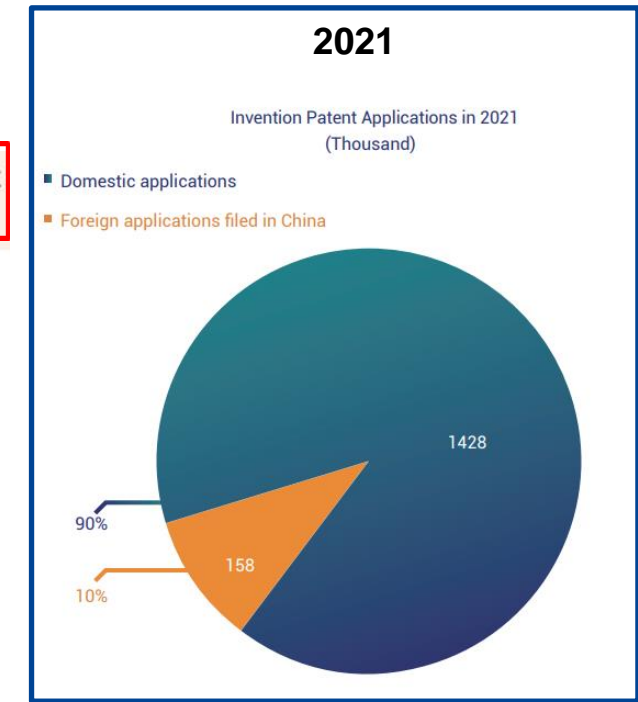


the quality of patents in China is improving at breathtaking speed.”

property agency. “Chinese companies are also more aware of the importance of protecting their IP.”

filing targets, intellectual property lawyers argue that they also reflect the country’s growing inventiveness.

- **1.586.000 CN invention patent applications in 2021 (+5.9%) – domestic 90%**

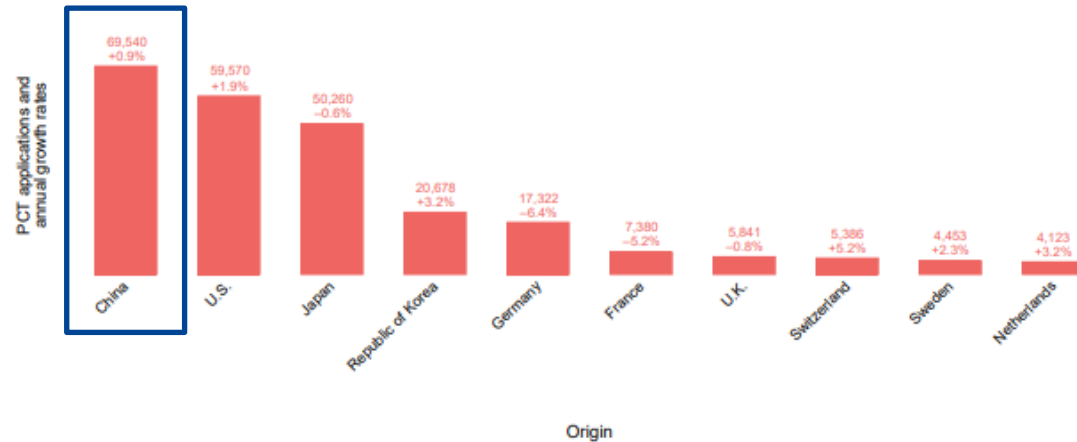


INTERNATIONALISATION

#3 - China was (again) the No.1 PCT APPLICANT in 2021

Among the top 10 origins, Switzerland's growth was the sharpest recorded in 2021.

Figure 2. PCT applications for the top 10 origins, 2021



Source: WIPO Statistics Database, March 2022.

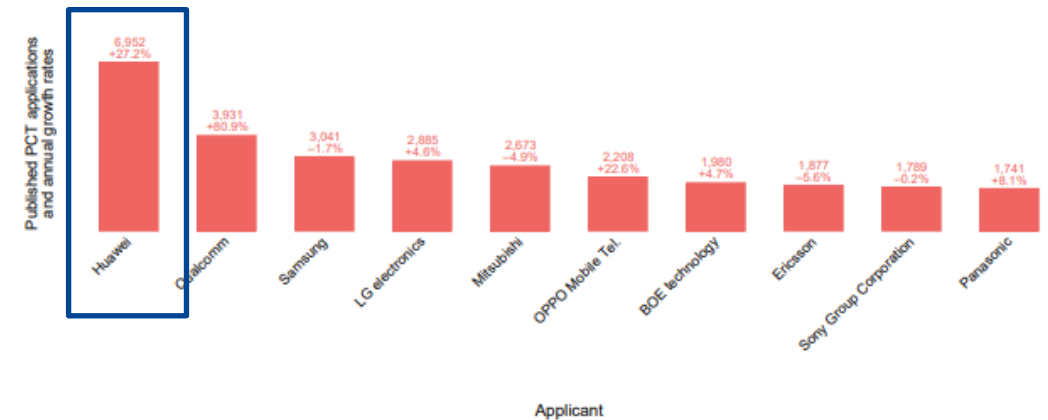
Applicants from China filed almost 70,000 PCT applications in 2021

China is the country with the most applicants to feature in the top 50 university list

The Shenzhen Institute of Advanced Technology became the top PCT applicant in the government and PRO sector (source: PCT Yearly Review 2022)

For a fifth consecutive year, Huawei Technologies ranked top PCT applicant in 2021.

Figure 4. Top 10 PCT applicants, 2021



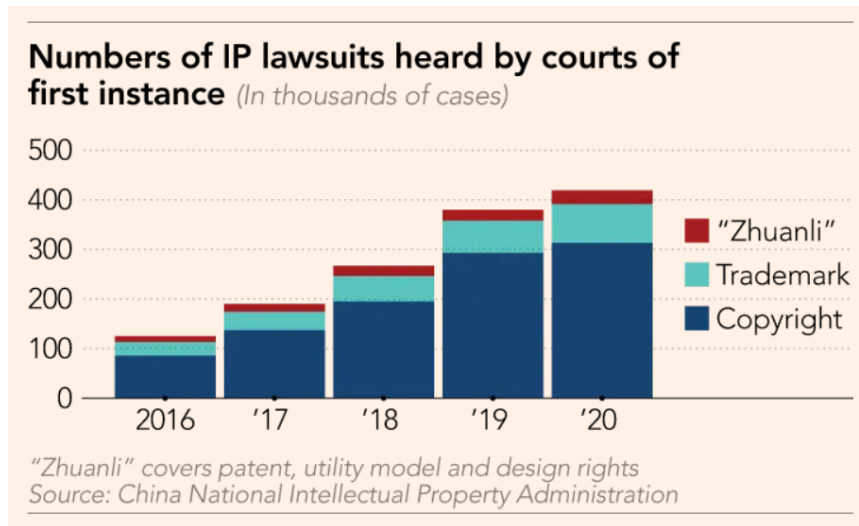
Source: WIPO Statistics Database, March 2022.

With Huawei as the top PCT applicant

TOP IP LITIGATION COUNTRY

#4 - China is THE MOST IP LITIGIOUS COUNTRY in the world since 2005

- **31,618 patent litigation** cases introduced in 2021 >< maybe 20 or 30 in Belgium (?)
- **+2000 IP judges; specialized IP courts**
- IP litigation cases are **mostly domestic** (CN >< CN): 96% between 2011 to 2014; today 99%
- Higher win rate of **foreigners** (based on public cases)
- **Increase in cases involving foreign businesses**
 - More cases against foreign businesses
 - More cases between foreign businesses
- **A strategic jurisdiction where to litigate patents**



China goes on an intellectual property offensive

Enhanced IP legislation means foreign companies need to be ready for lawsuits

Foreign businesses in China are becoming key targets in a growing number of intellectual property lawsuits filed by Chinese companies. Enhanced IP legislation, which has led to large amounts of damages for violations granted by courts, has opened the floodgates for litigation.

#5 - R&D spending in China grew tenfold between 2000 and 2016

➤ China has become an important innovation center

China / Science

China set to pass US on research and development spending by 2025

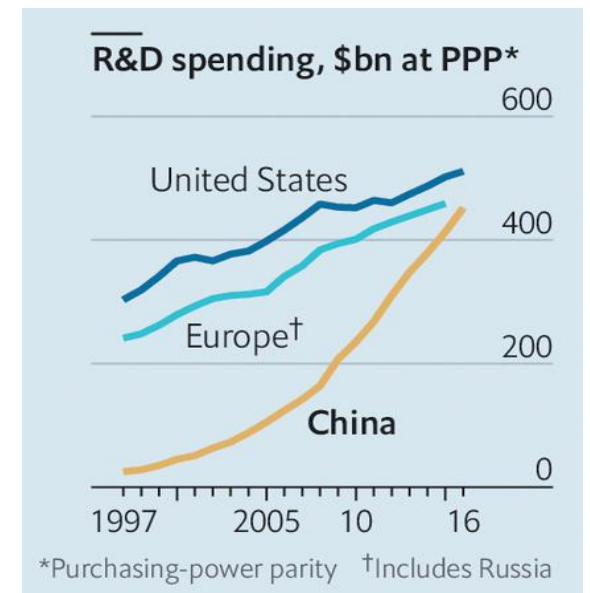
- China has been increasing expenditure at an annual rate of 16 per cent while the US has stagnated, according to a US think tank
- Chinese premier Li Keqiang has vowed to boost spending on basic research and there are also plans to develop fields such as AI and quantum information



Holly Chik + FOLLOW

Published: 6:00am, 16 Jul, 2021

Why you can trust SCMP



Source: The Economist 12-18 Jan.2019

➤ Q.1: Is China out innovating us?

➤ Q.2: What impact on IP?

IP = A POLITICAL IMPERATIVE

#6 - 14th FIVE-YEAR PLAN for 2021-2025

- Goal to become a **self-reliant technological powerhouse** (end reliance on foreign technology)

- Become the **global leader in strategic emerging industries**



Dutch curb chip equipment exports amid U.S. pressure

June 30, 2023, 3:44 PM CEST / Source: Reuters

*"The 14th Five-Year Plan (...) aim to set the points so **China can end its reliance on foreign resources and technology** – and become the **global leader in strategic emerging industries, frontier technology and science. Dependence on imported essential resources and key technology is perceived as a security issue, and more self-reliance seen as the path forward.** The new plan will strengthen industrial policy and support for domestic sectors and technologies deemed essential to the **national goal of becoming independent** from strategic resources"*

<https://merics.org/en/short-analysis/chinas-14th-five-year-plan-strengthening-domestic-base-become-superpower>

FOCUS ON INNOVATION LEADS TO FOCUS ON IP

- *"**Without innovation**, there will be no progress. **Full intellectual property protection** will not only ensure the lawful rights and interests of Chinese and foreign companies; it is also **crucial to promoting China's innovation-driven and quality development.**" – President Xi Jinping, Belt and Road Forum, April 26, 2019*
- **Is IP a driver of innovation? Yes**, IP is important but → other components that are more important (incl. centralized planning, CN is not a free market economy as we know it, and planning R&D and innovation → very strong driver)

Technological self-reliance

Q.1: Is China out innovating us?

- **CN very sophisticated and focused** (5y plans (many of them) + planning is in the fabric of their gvt structure)
- **CN has become a leading innovator → 3 indicators of the innovative output of a country**
 - Patents: e.g. deep learning → CN applicants applied for 6 times more patents than in the US ; in all areas of the Made in China 2025 plan → China is obtaining more patents than in the US
 - Peered reviewed scientific publications → CN authors outnumber US authors
 - Education → CN engineering graduates outnumber the US
- **In the industry** – areas where China leads
 - Telecom, 5G- 6G → CN leads
 - AI technologies → competition very fierce
 - Quantum computing → competition is fierce

"Many of the technologies targeted by key projects were already mentioned in the 13th Five-Year Plan – for example, **artificial intelligence (AI)**, **quantum science** and **cloud computing** – and are prerequisites for China becoming a “manufacturing superpower.” But **their new prominence in the latest plan is also a reaction to growing international tensions** over access to technology and resources. **Strategic emerging technologies like blockchain, semiconductors and next-generation AI feature more prominently than before**".

[China's 14th Five-Year Plan – strengthening the domestic base to become a superpower | Merics](#)

Early stages of these technologies → in some areas CN is outcompeting the US (and the EU), in others the US leads. Where is the EU?

Q.2: What impact on IP?

What is the state of the IP CN system?

- Great improvement → China has focused and improved
- Chinese companies develop valuable IP portfolios (in CN and abroad)

China is now **focusing on quality patents, less on quantity**

- The system is maturing → moving from the big numbers towards real innovation
- Real growth backed up by quality IP rights → to **enable to innovate domestically and then compete overseas**

What impact for EU SMEs? What are the related risks?

- **What is the biggest threat to your business? IP theft >< tech competitiveness?**
- A result of today's topic: "*China is aiming at becoming **more self-reliant in science and technology**. From an IP perspective, **more challenges may occur for innovative SMEs***"
- The real question: **what is the EU doing to ensure that EU industry is innovating at maximum?** In the long run, the way to outcompete China is to outinnovate China. What should the EU do?

Example: Tech transfer from CN to the EU for innovative battery technology

CN business planning to set-up a company in EU to commercialise a **new generation of batteries technology** in the EMEA region

- Technology **owned by a Chinese company**, with **relevant patent and trade secrets portfolio** (in CN and abroad) → **tools to succeed at home and to internationalise**
- BE company → joint-venture between (i.) a Belgian company and (ii.) the Chinese company owner of the technology (**to be licensed to the new BE company**)
- **Central to the deal: technology transfer agreement**
 - Importance for the CN company to have **relevant IP portfolio to license**

WHAT CAN WE LEARN from these facts & figures?

1. The Chinese (IP) landscape has CHANGED

China / Politics

Intellectual property: China's evolution from 'norm taker' to 'norm setter'

- A deeper look at intellectual property protection in China reveals a changing landscape as the country strengthens legal provisions and new battlegrounds emerge
- China has growing interests in IP, while the US Trade Representative is assessing its progress on commitments under the two countries' phase one trade deal



Matt Ho

+ FOLLOW

Published: 10:00am, 5 May, 2021

Why you can trust SCMP

<https://www.scmp.com/news/china/politics/article/3131750/intellectual-property-chinas-evolution-norm-taker-norm-setter>

2. It is possible to PROTECT your IP rights in China

- Complete and advanced legal system for protecting IP
- Widely used
- Available to foreign companies

3. It is possible to ENFORCE your IP rights in China


- CN companies → extensive use of the IP litigation system
- Available to foreign businesses

4. IPR is now ESSENTIAL FOR CHINESE BUSINESSES

- **More IP aware & more IP rich** (IP = competitive advantage = value)
- **China's stake in the IP system has grown and is now significant**



MERICS

Analysis Experts Events Services 

1. China ramps up IP protection to defend interests of Chinese firms

At a glance: The Central Committee of the Communist Party of China and the State Council issued guidelines to build a powerful intellectual property rights (IPR) country. The plan outlines policies and laws to be fleshed out by government ministries and numerical goals for 2025. Specific targets include:

Oct 05, 2021

<https://merics.org/en/merics-briefs/intellectual-property-rights-energy-consumption-transport-sector>

5. End technology dependence: what consequences for EU SMEs?

OPPORTUNITIES for EU technology companies

- Short /medium term - For EU tech companies active in the **strategic industries**
 - **Funding** available (attracting CN investments)
 - Strategic **tech transfers** + **contract manufacturing** + **R&D for CN firms**
 - **Supply of critical components/ technologies**
 - Support in **internationalisation**
 - **The opportunities are open only for Belgian companies with strong IP strategy, tailor made to the Chinese context and needs**

BUT

- Long term = once the technological gap has closed → **market access challenges** + **face international competitors**
- **Need for EU companies to stay one step ahead and strongly innovate**

5. End technology dependence: what consequences for EU SMEs? (2)

What impact on IP ?

DOMESTIC impact (CN companies)

- **Increased filings** in strategic industries
- **Greater scrutiny of foreign IP filings** in strategic industries + **more foreign IP invalidations**
- **More IP disputes**: more CN IP assertiveness

GLOBAL effects from CN companies

- **More outbound IP filings** in strategic industries
- **TMs**: internationalisation of **CN brands**
- **Patents**: more outbound filings and validations of **CN patents internationally**

2

How to Protect your Intellectual Property In China

STEP 1 - KNOW YOUR IP: perform an IP audit & due diligence

Intangible assets are **non-physical** (difficulty to identify)

Often **SMEs lack an overview** of IP assets of the company

Conduct an IP audit → are your products / technologies protected?

(1.) what are the IP assets of the company?

- Comprehensive overview of IP assets (owned, used, acquired)
- Ascertain legal status, territorial coverage, value, related risks
- Are you protected in China?

(2.) are the IP assets relevant businesswise?

- what value can be generated through IP assets

Recent example: BE medtech company – OEM in China but no IP rights registered (not even TMs)

STEP 2 – UNDERSTAND WHAT TO PROTECT

- **What IP assets are essential to achieve your business goals**
 - ❖ Expected ROI/ risks if lack of protection/ budget/...
 - ❖ Prioritize protection needs

- **What IP assets are missing?**
 - ❖ Align IP strategy with business strategy

STEP 3 – UNDERSTAND HOW TO PROTECT YOUR TECH

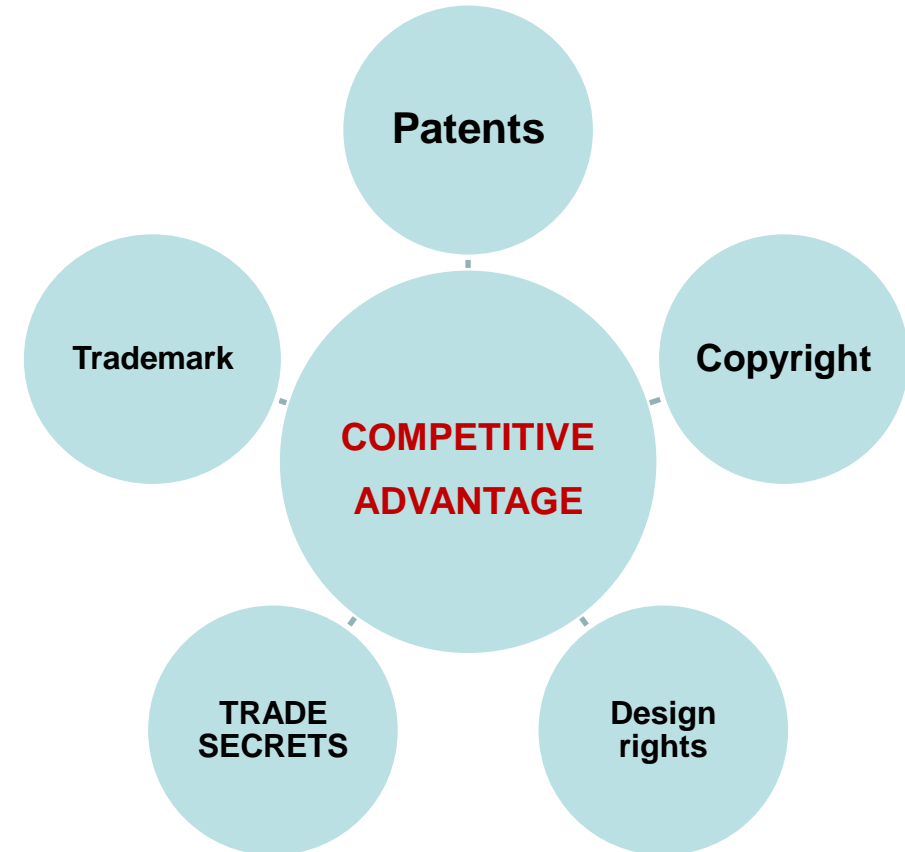
Two ways to protect the results of your innovation (complementary role)

1. Intellectual Property Rights ('IP')

- Exclusive right granted (monopoly)
- Relevant for the tech sector: mainly **patents and copyright**

2. Trade secrets ('TS')

- Protection based on the
 - nature of the information
 - the way the information is handled by the holder
- Protection against unlawful acts
- **The crown jewels of many tech companies**



STEP 4 - Create a BUNDLE OF RIGHTS: different IPRs serve different goals

- **Trademarks** - protect indication of **origin** of goods/ services (protect the brand identity of an organization)
- **Patents** - protect **technical features** of a product/process (protect inventions in any technical field, including computer implemented inventions)
- **Designs** - protect the **external aspect** of products (can be used to protect graphical symbols on a Graphical User Interface (GUI))
- **Copyright** - **creative works** (broad variety of works protected, including computer programs, databases, technical drawings)
- **Trade secrets** – **confidential** information (broad range of information protected, including data, algorithms, source code)

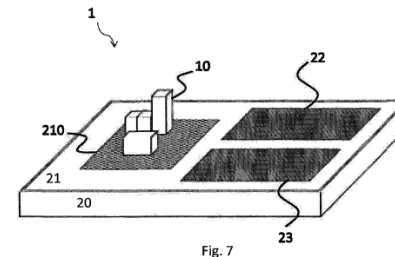


Fig. 7

000839469-0032 [+ info](#)

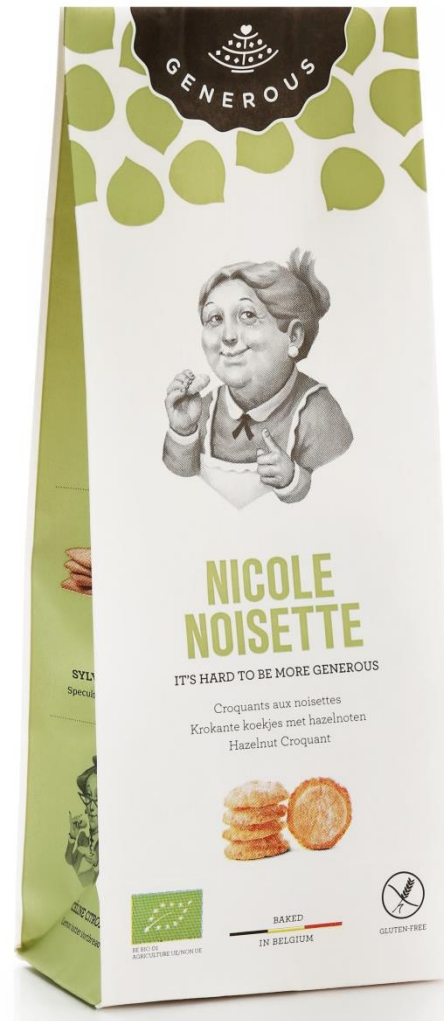
Design information

Design number	000839469-0032
Filing date	07/12/2007
Locarno class number	14.04
Indication of the product	Icons, Screen displays (part of -)
Design status	Registered and fully published (A.1.)
Reference	S113169EM/HH/sz

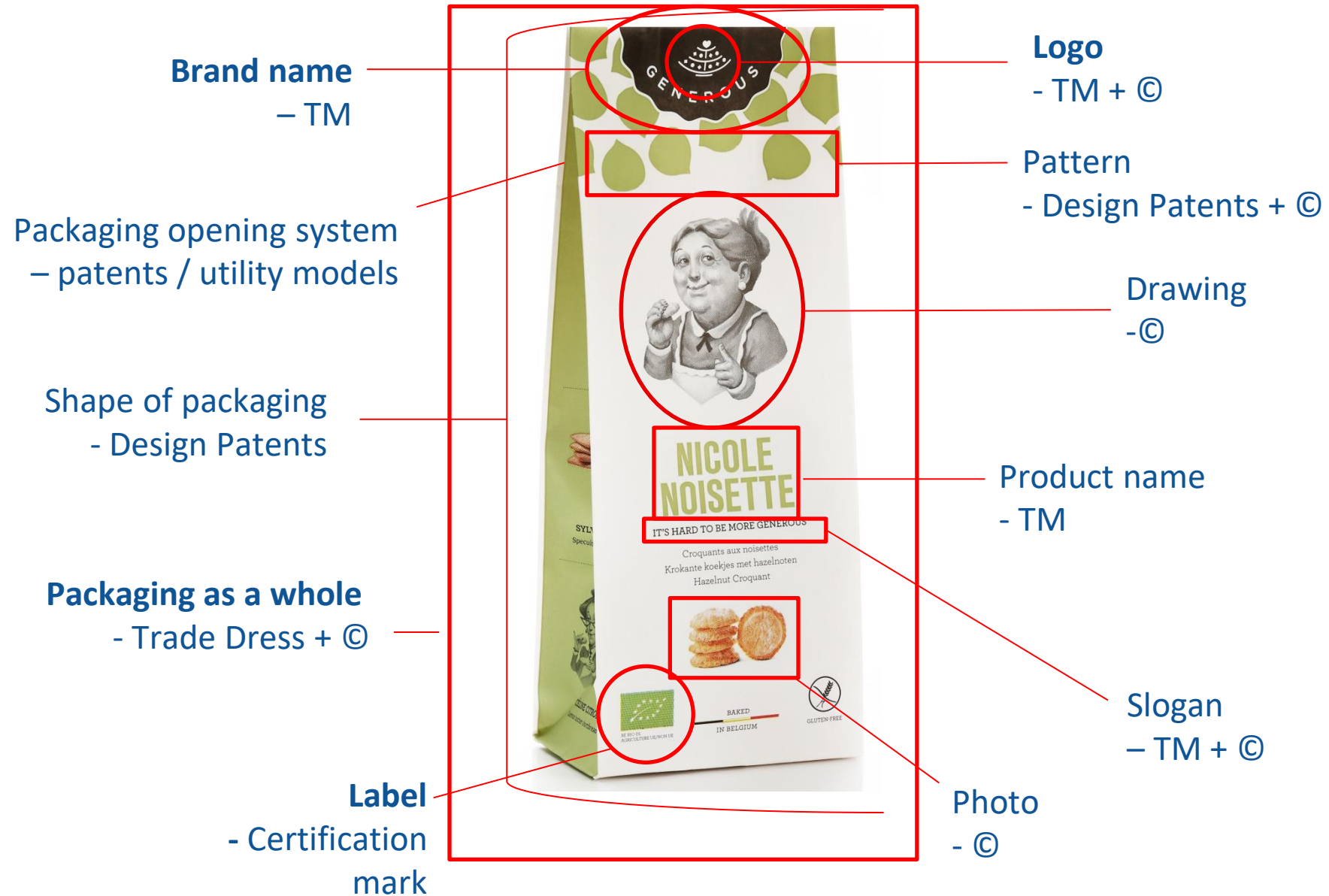
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21 <?php include("header.php"); ?>
22 <table width="900" border="0" align="center" cellpadding="0" cellspacing="0" border="1">
23 <tr>
24 <td>?php echo display_homepage_news(); ?>
25 </td>
26 </tr>
27 <tr>
28 <td width="50%" class="browse_title">Browse Categories/ods
29 </td>
30 </tr>
31 <tr>
32 <td colspan="2" name="form" style="width:100%; text-align:center">
33 <form name="form" style="width:100%; text-align:center">
34 <input type="button" value="Select Category" />
35 </form>
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39 <td colspan="2" name="form">
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41 </form>
42 </td>
43 </tr>
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45 <tr>
46 <td colspan="2" name="form">
47 <input type="button" value="Select Category" />
48 </form>
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50 </tr>
51 </table>
52 <?php print Some SetArticles Display(); ?>
```



A same object can be protected by different types of IP rights



Layer your IP (!)



STEP 5 - HAVE ENFORCEABLE IP RIGHTS

Be proactive!

- **TERRITORIALITY** of IPR
 - ❖ Cover countries where you trade, manufacture, exhibit
 - ❖ Countries of competitors + possible investors
- **REGISTRATION** is needed (!)
 - ❖ No automatic protection
 - ❖ Register on time (anticipate, plan early)
 - ❖ Not applying in China = FREE LICENSE to use your inventions
- **ADAPT to the specificities of the CN IP system**
 - ❖ E.g. Chinese utility model underused by foreign companies
 - ❖ Work with people who master the system



STEP 6 – Pay attention to IP in your CONTRACTS

- **Key for successfully protecting your IP in China**
- **IP + confidentiality** (trade secrets protection)
 - IP ownership issue / Validity of IP rights / Scope of protection
- **IP is relevant to numerous contracts**
 - Technology contracts ((co-)development, tech transfer, consultancy and service agreements)
 - TM and copyright licensing
 - Manufacturing agreements (OEM, outsourcing, etc.)
 - Distribution and sales contracts
 - Employment agreements
 - Consultancy agreements
 - ...

Step 7 - Focus on three types of rights particularly relevant for the tech sector

1. Patent rights

2. Copyright

3. Trade secrets ('TS')



Intellectual Property Rights ('IP')

7.1 Chinese patents in a nutshell

TWO TYPES of Chinese patents to protect innovations in the field of TECHNOLOGY

1. **Invention patents** can cover a **product, process or combination** of both (Art.2 PRC Patent Law)
2. **Utility models** only cover **products** (Art.2 PRC Patent Law)

THREE CONDITIONS for patent protection (Art.22 PRC Patent Law)

1. **Absolute Novelty** - *"the invention or utility model does not form part of the prior art"*
2. **Inventiveness** – *"the invention has prominent substantive features and represents an obvious progress, and that the utility model has substantive features and represents a progress"*
3. **Practical use** – *"the invention or utility model can be manufactured or used and can produce positive results"*

EXCLUSIVE RIGHTS are granted : a right to exclude others from

- manufacturing, using, offering to sell, selling or importing, the patented product
- using the patented process,
- using, offering to sell, selling or importing the product directly obtained by the patented process
- **without the patentee's authorization**

Patent rights are granted for a LIMITED TERM (art.42 PRC Patent Law)

- Invention patent: **20 years** < filing date
- Utility model: **10 years** < filing date

Patenting computer implemented inventions (CIIs) in China

- **Computer program *per se* → not patentable** (CN Patent Law Article 25(2): "rules and methods for mental activities" are excluded from patentability)
- **Computer implemented inventions is patentable** → rapid growth of filings
- **Expanding role** of digital technologies in the **Chinese economy** (AI, big data, blockchain,...)
- **New Patent Examination Guidelines (2020 Amendment)** → guidance on the examination + on drafting requirements
- **The rule: in a CII → relevant technical means must solve a technical problem**
- E.g. Patent claims related to abstract algorithms, **insofar as they contain technical features**, → **not excluded** from patentability (Chinese Patent Law Article 25(2))

Example: Image Processing

"A method for training a convolutional neural network (CNN) model, comprising

obtaining model parameters to be trained . . .

acquiring a plurality of images . . .

performing a convolution operation and a maximum pooling operation on each training image . . .

performing a horizontal pooling operation . . .

determining a feature vector of each training image . . .

processing each feature vector . . .

calculating a class error . . .

further adjusting the model until the number of iterations reaches a preset number; and taking the model parameters obtained as the model parameters of the trained CNN model.

Technical Problem: CNN can only recognize fixed sized images

Technical Means: training images on different convolutional layers

Technical Solution: trained CNN model can identify any sized images

This invention is ELIGIBLE. *Although it involves operations that are based on mathematical concepts, these steps are all tightly tied to the technical problem of training a CNN model to better recognize images. The data being processed by the algorithm is image data, the technical means is tightly tied to improving processing of this image data, and the resultant effect is a highly trained CNN model that can better identify images".*

The Chinese Utility Model

UTILITY MODELS
Cover smaller technical improvements of products
Inventiveness requirement is lower and low
No substantive examination (only formal)
Quickly registered: 6 to 12 months
Term of protection: 10 year from the date of filing (vs.20y)
Same rights as an invention patent
Easy to get, difficult to invalidate

Invention Patents:
Foreign/CN
~ ratio of 1 to 9

Utility Models:
Foreign/CN
~ Ratio of 1 to 382

Source: CNIPA Statistics Database

Number of Chinese Invention Applications Filed (T – Total Applicants; D – Domestic Applicants; F – Foreign Applicants)												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 Jan.-Nov.
T	314,573	391,177	526,412	652,777	825,136	928,177	1,101,864	1,338,503	1,381,594	1,542,002	1,400,661	1,402,698
D	229,096	293,066	415,829	535,313	704,936	801,135	968,251	1,204,981	1,245,709	1,393,815	1,243,568	1,263,695
F	85,477	98,111	110,583	117,464	120,200	127,042	133,613	133,522	135,885	148,187	157,093	139,003

Source: CNIPA Statistics Database

Number of Chinese Utility Model Applications Filed (T – Total Applicants; D – Domestic Applicants; F – Foreign Applicants)												
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 Jan.-Nov.
T	310,771	409,836	585,467	740,290	892,362	868,511	1,127,577	1,475,977	1,687,593	2,072,311	2,268,190	2,726,211
D	308,861	407,238	581,303	734,437	885,226	861,053	1,119,714	1,468,295	1,679,807	2,063,860	2,259,765	2,719,099
F	1,910	2,598	4,164	5,853	7,136	7,458	7,863	7,682	7,786	8,451	8,425	7,112

- Easy, cheap and quick to obtain
- Take advantage of CN utility models

CN Utility Models are massively underused by foreign companies

7.2 Protect your trade secrets

Trade secrets = crown jewels of many tech companies

WHAT can be protected?

- Broad range of technical/commercial/operational **information**
- ✓ processes, methods or steps thereof,
- ✓ algorithms, data, computer programs

REQUIREMENTS - Art.9 CN AUCL

1. SECRET - “*not known to the public*”
2. COMMERCIAL VALUE because it is secret - “*has commercial value*”
3. REASONABLE STEPS to keep it secret - “*reasonable efforts to maintain secrecy*”



Recent changes in the Chinese Anti-Unfair Competition Law (art.9 CN AUCL)

Strengthening of the TS protection regime

- **More information** may qualify as TS
- **More acts** qualify as misappropriation
- **More people** may be held liable

REASONABLE STEPS to keep information secret are KEY

- **Legal requirement:** “has adopted secret-keeping measures” (Art.9 CN AUCL)
- **Need to take proactive measures to protect secrecy**
- No reasonable steps = information is no trade secret → **loss/ absence of protection**
- **Variety of measures** to be taken: legal, HR, IT, organizational,...

WHAT reasonable steps to implement?

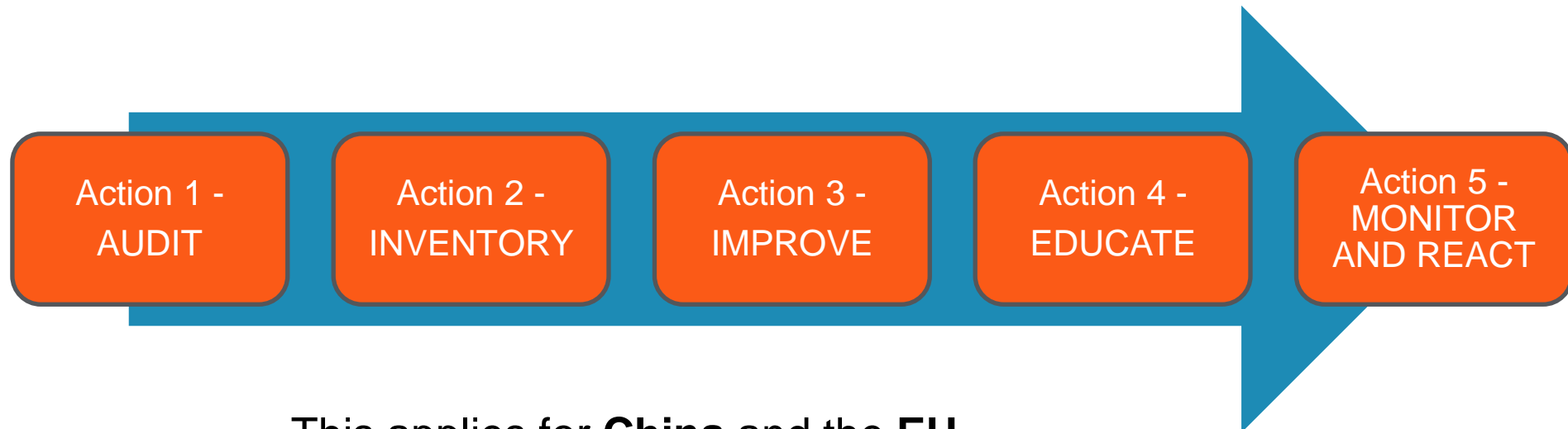
Art.7 SPC JI 2020: Non-exhaustive list of confidentiality measures

→ Useful guidance

- (I) *Signing a confidentiality agreement or stipulating confidentiality obligation in the contract;*
(contracts)
- (II) *Providing confidentiality requirements through articles of association, trainings, rules and regulations, written communication, etc., providing confidentiality requirements on employees, former employees, suppliers, customers, visitors, etc. who can access or obtain trade secrets;* (training and regulations)
- (III) *Restricting visitors to or providing segregated management to confidential production and business premises such as factories and workshops;* (physical barriers – access control)
- (IV) *Distinguishing and managing trade secrets and carriers thereof by means of marking, classification, separation, encryption, sealing and restricting the scope of persons who can reached or access, etc.;* (access management!)
- (V) *Taking measures of prohibition or restriction of using, access, storage, duplication, etc. on computer equipment, electronic equipment, network equipment, storage equipment, software, etc. that can access or obtain trade secrets.;* (IT measures)
- (VI) *Requiring employees about to leave their jobs to register, return, clear and destroy any trade secrets and the carriers thereof that they have accessed or obtained and to continue to bear the confidentiality obligation;* (HR management)
- (VII) *Other reasonable measures of confidentiality”* (open notion)

Trade secrets = crown jewels of many tech companies

- **Trade secrets Protection requires proactivity** → have a TS management strategy (no automatic protection)
- Audit & improve **protection measures** (an **NDA is a good start... but is not enough**)
- **Document** all transfers and your **confidentiality measures**
- **Main risks come from the business** ((ex-)employees; consultants; business partners)
- **Enforcement is challenging** (document, document, and document!)



This applies for **China** and the **EU**

7.3 Chinese copyright protection in a nutshell

Broad scope of protection: "work"

- Copyright protects original work (no abstract idea or concept)

Software is usually protected by copyright ©

- Protection of **source code & preparatory material**
- © also protects user **manuals, website contents, marketing material, logos**, etc.

Copyright protection is automatic

- Protection **as soon as an original work is created**
- No registration needed BUT **voluntary recordation mechanism**
 - presumptive evidence of ownership (date of creation & authorship)
 - Required for enforcement in China
 - Useful for negotiations and licensing
 - Possible for SW → part of the source code must be disclosed but confidential portion can remain confidential (+ it is no public register >< patent register)
 - Not expensive

Beware of ownership issues → organize by contract (e.g. SW development in China, through employees, consultants, third-parties → third party owns the copyright unless the contract states otherwise)

3

CONCLUSION

*What to
remember ?*

ALIGN YOUR IP STRATEGY TO YOUR CHINA (& GLOBAL) BUSINESS NEEDS

1° **Chinese IP landscape is constantly on the move** (legislative dynamism: pro patentee; pro trade secrets holder) → **support the competitiveness of Chinese companies**

2° **Main IP issues often because foreign company failed to take the required steps**

3° **Opportunities for EU SMEs with tech./strong brands AND an IP strategy** (more competitive, valuable)

4° **Be PROACTIVE and have a tailor made IP STRATEGY**

- Start early: plan ahead & anticipate
- Define your strategy
- Know your IP (audit): Identify what you need to protect & prioritize (seek help)
- Register (Build a relevant IPR portfolio)
- Layer your IP (create a bundle of rights)
- Adapt to local specificities (have a glocal IP Strategy)
- Pay attention to trade secrets (reasonable steps)
- Negotiate contracts in great detail
- Due diligence (vet your partners)
- Raise awareness with management

5° **Be confidentiality obsessed** (trade secrets audit + confidentiality management) and **focus on human resources**

Any questions ? drop me a line!



Valentin de le Court

Counsel IP/IT/Data team

Belgium

valentin.delecourt@osborneclarke.com

Questions?

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question@china-iprhelpdesk.eu

+86 - 10 - 6462 0892