



# Experiences of EU SMEs with IP Protection in the Healthcare Sector

- Matias Zubimendi 18 May 2021



# China IP SME Helpdesk

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## IP Factsheet: Mainland China



**1. THE FACTS: Business in Mainland China for EU Companies**  
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 (GIs)  
E. Trade Secrets

**4. Using CUSTOMS to block counterfeits**

**5. Enforcing your IP**  
Administrative actions  
Civil Litigation  
Criminal Prosecution

**6. RELATED LINKS and Additional Information**

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**1. THE FACTS: Business in Mainland China for EU Companies**  
(Source: DG Trade)



473.4  
299.9  
173.5

**SIZE of Market:**

- EU exports to Mainland China: EUR 173.5 billion
- EU imports from Mainland China: EUR 299.9 billion
- Total trade in goods: EUR 473.4 billion

› Mainland China is the EU's second largest trading partner, after the USA.  
› The EU is China's largest trading partner.

**Key INDUSTRY SECTORS:**

- › EU exports to Mainland China are dominated by machinery and equipment, motor vehicles, aircraft, and chemicals.
- › Mainland China's key export items to the EU include machinery and equipment, footwear and clothing, furniture and lamps, and toys.

## Protecting Your Trade Secrets in China

Prevention is the key to protection.



### WHAT EXACTLY CAN BE A TRADE SECRET

SOMETHING THAT

- 1 is not publicly known
- 2 has commercial value
- 3 you took measures to keep secret

expressions of ideas

know-hows, manufacturing or design techniques

status of products or services under development

valuable business information, lists, cost and price information

**TRADE SECRETS**

### KEEP IT SECRET, KEEP IT SAFE

It is important to remember that once trade secrets become publicly known, they can no longer be protected as trade secrets.

**CONFIDENTIAL**

### DON'T FORGET YOUR EMPLOYEES

- Limit access and copying rights to the personnel who actually need it.
- Require all employees to sign an employment agreement with strict confidentiality provisions.
- Be sure to hold exit-interviews and have them return documents, materials, computers, and files.
- Establish an internal management system for trade secrets. Training and clear written guidelines are essential.

### DEALING WITH THIRD PARTIES

Business dealings or negotiations with third parties, potential partners, suppliers, contractors, licensees, or customers

**monitor** your partners, suppliers or licensees to make sure they are complying with your trade secrets protection policy

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

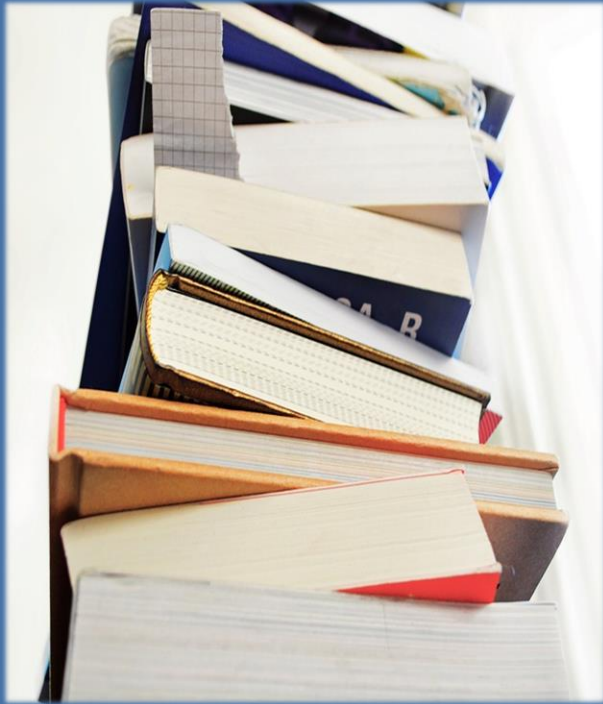
# Speaker's Bio



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Mr. Matias Zubimendi is the IP Business Advisor at China IP SME Helpdesk, where he advises European SMEs on intellectual property rights matters. Mr. Zubimendi holds a Master's degree in Chinese Civil and Commercial Law from Peking University as well as a Master's degree in Intellectual Property Law from Austral University in cooperation with the World Intellectual Property Organisation. Mr. Zubimendi has a strong background in both business development and intellectual property rights protection, having previously worked as a China Business and Legal Consultant at Terragene, where he focused on business development and as a Director of Legal Affairs at Conquer Europe. Previously, he has also worked as a Patent and Trademark Attorney at Phoebus Abogados and Mazzeo & Canet, where he represented SMEs as well as Fortune 500 companies.

Mr. Zubimendi has given lectures at various conferences including the Ibero-American Conference on Chinese Studies and published several articles including *The legal protection of intangibles in the video games industry*. As a Professor Assistant, he has also given lectures on Commercial Law and Procedural law, while focusing on Copyright and AI in his research. Mr. Zubimendi is a native Spanish speaker fluent in English.



# Table of Contents

01 Introduction to IPRs in the healthcare sector

医疗领域涉及的知识产权概述

02 Trade marks

商标

03 Copyright

著作权

04 Invention Patents

发明专利

05 Takeaway messages

小结

# 01

## Introduction to IPRs in the healthcare system

### 医疗领域涉及的知识产权

#### Intellectual property rights (IPR)

#### 1.1

#### Main intellectual property rights

知识产权主要包括:

- Invention patents & utility models  
发明专利及实用新型专利
- Design patents 外观专利
- Copyright 著作权
- Trade marks 商标
- Trade secrets 商业秘密

#### 1.2

#### Main principles

基本准则:

- Registration  
注册
- Territoriality  
地域性



# 02

## Trade marks - The problem of common names

商标 – 通用名称带来的问题



### 2.1

#### What can I register as a trade mark?

可以作为商标注册是:

- Signs that help your product to be distinctive from your competitors  
*有助于与他人商品区别开的标志*
- **NOT** generic terms or terms that describe the products

不可以用 *通用名称或产品描述性术语*

### 2.2

#### Name of the medicine

*药品名称*

- Drug name (Scientific name)  
*药品名称 (学名)*
- Common name *通称*
- Commercial name *商用名*



# 02

## Trade marks - The problem of common names

### 商标 – 通用名称带来的问题



#### 2.3

#### 舒泌通 (Shu Mi Tong) case

- “舒泌通” was a registered trade mark since 2008.

*2008年“舒泌通”作为商标注册成功*

- The mark was listed as a common name in Drugs Pharmacopeia by the SFDA in China in 2002 by the name 舒泌通胶囊 (Shu Mi Tong Jiao Nang)

*2002年国家食品药品监督管理局SFDA将“舒泌通胶囊”作为通用名称列入了药品目录*

- The registered trade mark was used by 3<sup>rd</sup> companies

*第三方企业使用了该注册商标“舒泌通”*

- Chinese courts said that 舒泌通 is a generic name, hence not protectable.

*法院认为“舒泌通”为通用名，因此对商标的保护要求不予支持*

# 03

## Copyright - The importance of originality

### 著作权 – 独创性的重要性



#### 3.1

#### Protection

##### 著作权的保护

- Is copyright registration needed?  
*著作权是否需要注册*
- Originality requirement  
*对独创性的要求*

#### 3.2

#### How can we increase originality?

##### 如何提升独创性

- Pictures  
*照片图片*
- Drawings  
*设计图*

# 03

## Copyright - The importance of originality

### 著作权 – 独创性的重要性



#### 3.3

### Leaflet / product information sheet – Originality

#### 产品宣传资料/产品信息表 – 独创性

- EU company sued a Chinese company for copyright infringement over the product information sheet.

*某欧盟企业起诉一家中国企业侵犯了其产品信息表上的产品著作权*

- First and second instances Courts ruled in favour of the EU SME.

*法院的一审、二审判决均对欧盟中小企业有利*

- Hunan Higher People's Court overturned both previous decisions stating that the information sheets lack of originality and are not copyright protectable.

*但是湖南省最高人民法院推翻了此前的两次判决。法院认为资料上的信息缺乏独创性,因此不受保护*

# 04

## Invention patents - Keep innovating

### 发明专利 – 保持新颖性



#### 4.1

#### Patent life-cycle

- 20 years since filing

*发明专利权期限 – 自申请之日起二十年*

#### 4.2

#### Patent extension

*发明专利延期*

- Administrative delays
- Drugs industry – marketing approval delay

*审批延迟*  
*医药行业 – 市场准入审批的延迟*

#### 4.3

#### Technology protection extension

*技术保护延期*

- Keep innovating
  - Side technologies and the commercial impact of them
- 仍具有新颖性*  
*端技术及商业影响*

# 04

## Invention patents - Keep innovating

### 发明专利 – 保持新颖性



#### 4.4

### Novartis case - Glivec, i.e. Imatinib mesylate

#### 诺华制药案例 - 抗癌药格列卫(Glivec)

- Patented medicine – patent expired 2013  
*专利药品 – 专利到期日2013年*
- Generic drugs were made after the patent expired  
*专利到期后仿制药开始出现*
- Around the core patent of the compound, Novartis continues to develop and obtain a number of relevant patents (E.g. including a variety of new crystals, new indications of disease).  
*诺华制药围绕该药品的核心专利，继续开发并获得多项相关专利（如各种新型晶体、新的适应症）*
- The “improved” versions of the medicine are protected despite the fact that the core patent has expired.  
*尽管原核心专利保护期已过，但其改进版仍受到专利保护*

# 10

## Takeaway messages

### 小结



- ✓ Register your IP **ASAP** – first to file rule  
*知识产权应尽快申请注册 – 申请在先原则*
- ✓ Check the generic names of products in official lists before registering your trade mark  
*商标注册前，在官网查清楚哪些是产品通用名称*
- ✓ Give originality to your product's information sheet/instruction manual  
*产品信息表/说明书上的产品信息，要包含新颖性的信息*



- ✓ Extend the life of your patents when possible  
*尽量延长专利权保护期*
- ✓ Keep innovating your core patents – new versions might make your competitor's generic version less commercially valuable  
*保持核心专利的新颖性 – 改进版，具有降低被仿制的通用款的商业价值的可能性*



- ✓ Contact the China IPR SME Helpdesk 联系我们 **[question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu)**

Questions?

# HELPLINE

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*3 days*<sup>working</sup>

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