

Understanding IP in China: Overview of IP landscape

Lisa Lu, 11 April 2025

CHINA
IP SME HELPDESK



China IP SME Helpdesk

ABOUT US

The Helpdesk in a nutshell

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

 100,000+ SMEs assisted to date



HELPLINE

free, fast & confidential

3 ^{working} *days*

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One-on-one
sessions



Self-learning materials



Website IP tools
& Blog



FREE OF CHARGE!

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 (GIs)
 - E. Trade Secrets
- 4. Using CUSTOMS to block counterfeits**
- 5. Enforcing of rights**
 - Administrative actions
 - Civil Litigation
 - Criminal Prosecution
- 6. RELATED LINKS and Additional information**

IP Factsheet: Mainland China

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GUIDE

- 1. Intellectual Property Rights for SMEs: Why are they relevant to you?**
- 2. How does China's IP legal framework compare to that of the EU and international standards?**
- 3. Trade marks**
- 4. Patent rights**
- 5. Design rights**
- 6. Copyright**
- 7. Trade secrets**
- 8. Geographical Indications (GIs)**
- 9. Using Customs to Block Counterfeits**
- 10. Enforcement of Intellectual Property Rights**
- 11. China's IP Commercialisation Peculiarities**
- 12. Related Links and Additional Information**

Intellectual Property Systems: China / Europe Comparison

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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>

Speaker's Bio



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Lisa Lu is the IP Business Advisor at China IP SME Helpdesk in Beijing, where she advises European SMEs on intellectual property rights matters. She holds a double master's degree in law from the China University of Political Science and Law and University of Hamburg. Before joining the China IP SME Helpdesk at the European Chamber, Lisa worked as a trademark attorney for the Ferrante Intellectual Property and Chang Tsi & Partners. She mainly focused on the fields of trademark prosecution, trademark enforcement, copyright protection and unfair competition. During her time working in both law firms, she dealt with a variety of clients including but not limited to automotive performance, media, entertainment, new energy, apparel, architecture design, data management, e-commerce, household products, HVAC, and fire & security. Her clients included a range of globally leading companies and small and medium-sized enterprises (SMEs). Lisa is fluent in Chinese and English.



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01 | IP landscape in China

1978

No IP laws

Major amendments
of all IP laws
since 2017

China is a signatory to all major IP treaties:

- PCT (*Patent Cooperation Treaty*)
- Hague system (*industrial design*)
- Madrid system (*trademark*)
- Berne convention (*copyright*)

China has remained
the top origin of PCT
since 2019

2023/2024

IP becomes a top national
priority

01 | IP landscape in China

– Why IP is important

- Exclusive right to exploit your IP in China
- IP attracts partners and investors
- IP helps monetising products and ideas
- Taking action against infringements
- Preventing bad faith IP registrations by others



01

IP landscape in China – IP types

IPR Invention patents

- New technical solutions
- Improvements to a product/ process
- Absolute novelty (for all patents)

IPR Utility models

Functional aspects of a product

IPR Design patents

Aesthetic aspects of a product

IPR Trademarks

- Brand name, brand logo
- Consider a Chinese trademark

IPR Copyright

- Logo, brochures, video, software
- Voluntary registration

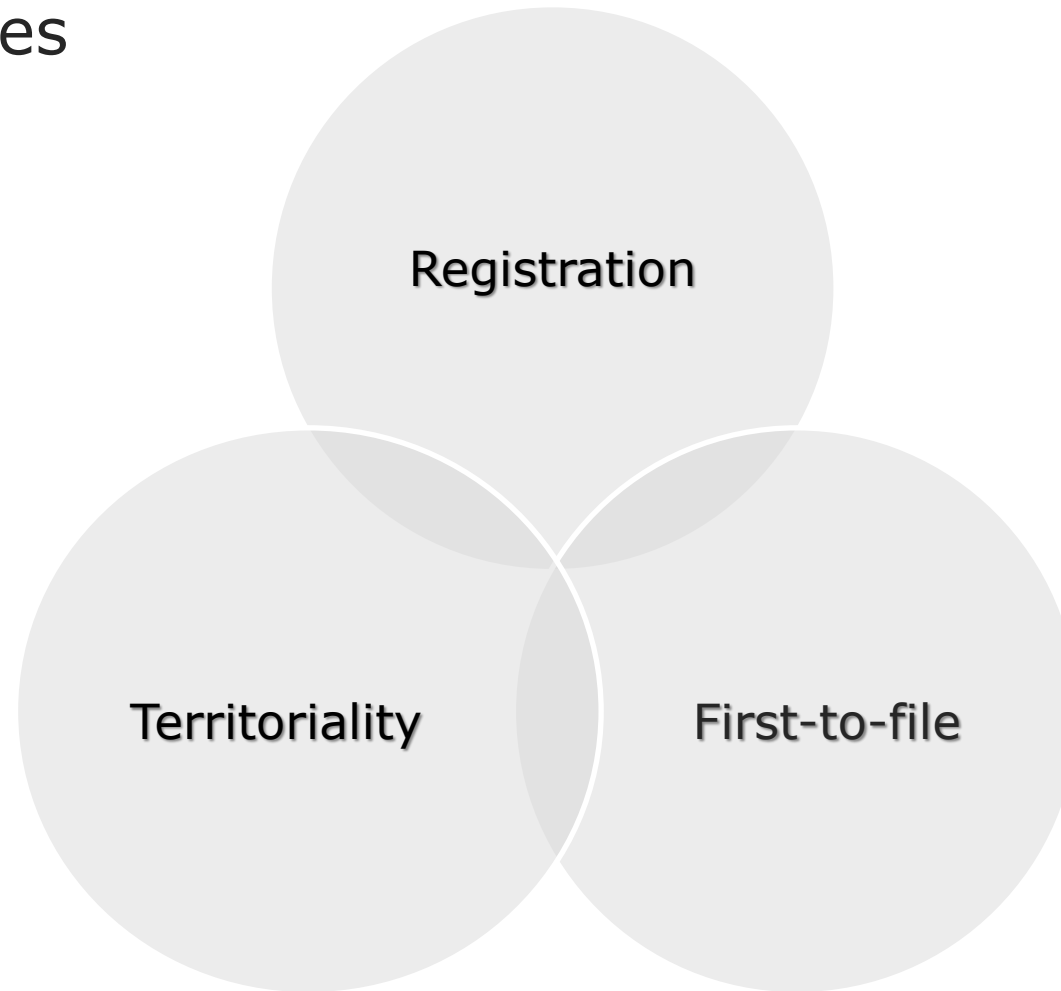
IPR Trade secret

- 3 elements: non-public, actual or potential commercial value, confidentiality measures.
- Anti-unfair Competition Law



01 | IP landscape in China

- IP principles



01 | IP landscape in China

- Trademark

TM Brand name, logo, trade name

® Registration system

- National: CNIPA; trade fair priority rights; starting from 400 € (official fees 40 € + attorney fees).
- International: Madrid system; 771 €+.

☰ Classes and subclasses

- 45 Classes
- Subclass principle

中 Chinese trademarks

- Phonetical
- Literal
- Easy to remember

CLEARANCE SEARCH
IS

IMPORTANT

01

IP landscape in China - Patent Protection



Invention patents vs Utility models vs Design patents

- **Invention patents**: new technical solutions or improvements to a product or process, functionality. 20 years of protection. 440 € +.
- **Utility models**: products with new shape or structural physical features, functionality. 10 years of protection. 64 € +.
- **Design patents**: the aesthetic aspects of the product, non-functionality. 15 years of protection. 64 € +.

- Storage battery
 - New management system that allows the battery to work more efficiently
 - **Invention patents**
 - Battery structure to reduce temperature
 - **Utility models**
 - The unique shape of the battery
 - **Design patents**

01

IP landscape in China - Patent Protection



Two routes

- **National:** directly with the CNIPA.

Exemption of absolute novelty: international trade fairs recognised by Chinese government (6 months)

Priority claims: 12 months for invention and utility model;
6 months for design patent

- **International:**
 - PCT: invention patent and utility model
 - Hague system: design



01

IP landscape in China

– How to protect trade secrets (5 steps)

- **Identify and catalogue** your trade secrets
- Use a combination of **physical, technical and contractual barriers**
- **Document** trade secret protection measures you take, in case of a dispute later on
- Implement a trade secret protection policy within your company and your partner, making sure your **employees** understand your expectations
- Consider non-disclosure agreements (**NDA**) before entering negotiations with third parties



01

IP landscape in China

– Due diligence on business partners



?

How to study a Chinese business partner?

- National Enterprise Credit Information Publicity System (NECIPS)
- Contact public institutions
- Embassies
- Chambers of Commerce

?

What can I learn from NECIPS?

- Legal representative
- Capital
- Business type / scope
- Date of establishment
- Shareholders
- Abnormal operation enterprise?
- Disputes
- Annual reports



<http://www.gsxt.gov.cn/index.html>


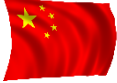
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IP landscape in China

- Comparison of IP systems in EU and China

Common:

- Patents and trademarks can be extended internationally.
- Trademark protection term: 10 years.
- Invention patent protection term: 20 years.

	 Europe	 Mainland
Enforcement	Might be possible to enforce <u>without</u> registration	No enforcement is possible without registration
Invention Patent	It takes shorter time to get patent registered.	It takes 3-5 years to register invention patent. Certain software can be patented.
Design	Can be protected either as an unregistered Community design (<u>3 years</u>) or as a registered design (<u>25 years</u>)	Need to be registered as design patents to be protected (<u>15 years</u>)
Utility models	Less common in Europe	Being widely used forms of IPR for inventions in China
Customs	Only inspect <u>imported</u> goods	Customs authorities inspect both <u>imported and exported</u> goods

01 | IP landscape in China

- Patent update



Patent Law (*Amended*)



Implementing Regulations
of the Patent Law (*Amended*)



Patent Examination
Guidelines

- IPR International design
- IPR Software patent
- IPR Extension of the exemption of novelty
- IPR Open license system
- IPR Patent evaluation reports
- IPR The inventor remuneration
- IPR Principle of good faith
- IPR Deferment of examination
- IPR Priority rights
- IPR Patent Term Adjustment (PTA)
- IPR Patent Term Extension (PTE)

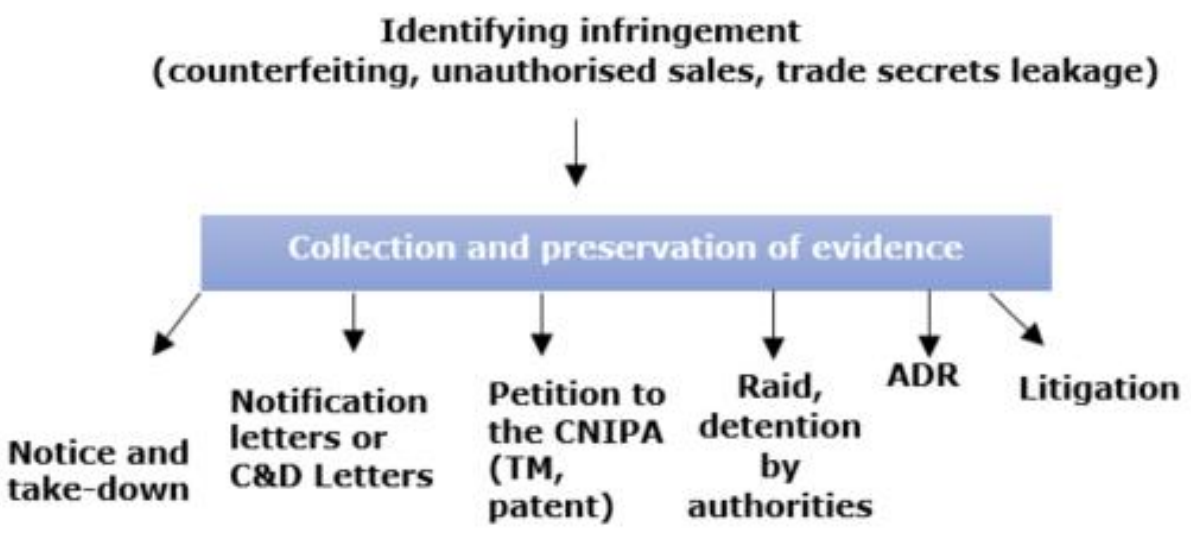
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02 | Remedies for IP infringements in China

- Enforcement options

Roadmap of enforcement actions



- Registration certificate in Chinese is required.
- Use notarisation and blockchain to preserve the evidence.
- E-commerce platforms: notice and take-down procedures.
- Administrative actions are relatively fast and cost-effective.
- Consider Internet Courts for online IP disputes.
- PoA and business license: Apostille instead of legalisation from 07 Nov. 2023.

03

For SMEs: Main IP Concerns and Common Mistakes

- Main IP concerns the SMEs face in China



Bad faith IP registrations

- Illegal under the law, commonplace in practice
- Costly and complicated to overcome
- Many SMEs still enter the market without proper IP registration in place



Public database accessibility

- Various public database require Chinese phone number and limited ID types
- Not user-friendly, especially for non-Chinese users



E-commerce related Issues

- Sophistication of infringers and difficulties with market monitoring
- Notice and-take-down procedures, and IP certificates



03

For SMEs: Main IP Concerns and Common Mistakes

- Main IP concerns the SMEs face in China



Enforcement related issues

- Costly and time-consuming proceedings
- Evidence collection is difficult and burdensome
- Low damage awards issued by the courts
- Unable to obtain compensation regardless of a favourable judgement



Counterfeiting from China

- 65% of IPR infringing goods entering the EU in 2023 were from China and Hong Kong
- Difficulties of investigation



Trade secret related concerns

- High threshold for proving the trade secret is not known to the public
- The Chinese partner does not comply with NDA/ NNN



03

For SMEs: Main IP concerns and Common mistakes

- Common mistakes SMEs make when entering the China market

Mistake**Advise**

a. *I have used my TM in China, so my TM is protected in China.*



a. First-to-file vs. first-to-use.

b. *I have IP registered in EU, that means my IP is protected in China.*



b. Territorial rights: IP in EU \neq in China.

c. *I do not need to register my IP before attending the trade fairs in China.*



c. Without registration, without protection.

d. *With international trademark certificate, I can enforce my rights in China*



d. Double check if the certificate is in Chinese.

03

For SMEs: Main IP concerns and Common mistakes - Common mistakes SMEs make when entering the China market

Mistake



Advise

e. *IP registration already costs money, I do not want to spend extra budget for the searches before registration.*



e. Trademark search, and patent freedom-to-operate are very important.

f. *I have trademark registered in China, the Customs will automatically inform me of counterfeiting.*



f. Record your IP with the China Customs.

g. *The screenshots/ photo of infringing online shop/ counterfeits should be enough to prove the infringement.*



g. Notarisation is important, otherwise the evidence could be invalid.

03

For SMEs: Main IP concerns and Common mistakes - Common mistakes SMEs make when entering the China market

Mistake



Advise

h. I have IP registered in Mainland China, so I can safely use my IP in Hong Kong, Taiwan and Macao.



h. There are different IP systems applied in 4 jurisdictions.

i. My friend recommends a Chinese company to be my manufacturer in China, I can cooperate with this company.



i. Background searches are necessary.

j. Making my Chinese partner sign an NDA will damage our business relationship.



j. NDAs are widely accepted in Chinese business.



Case Study 1

- How to protect IP before attending trade fairs in China?

The Background

Spanish SME, a producer of agriculture and farming equipment including tractors, planning to attend a trade fair in Beijing.



Innovation New model of a tractor (with millions in developing), new design, new function (lower fuel consumption), engine without invention patent in China.



Challenge: Loss of novelty for engine vs loss of business opportunity.



Chinese law: absolute novelty requirement for patent; 6 months of trade fair priority for patent.



Action taken

- **IP audit:** technologies, designs, brands, etc.
- Logo and trade name: trademark.
- Product catalogue: copyright.
- Design of the tractor: design patent.
- Engine – trade secrets.
 - Exhibited without the engine.
 - Internal legal training for the staff promoting the tractor and discussing the advantages of the new engine without leaking the details of the technology to maintain patentability.
 - Notarisation of exposure of the tractor.

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Outcome

- Showcase the tractor without the loss of novelty of the engine.
- Later obtaining an invention patent for the engine.



Lesson learnt

- It is not recommended to participate in a trade fair without prior protection of intellectual property rights.
- Using IP registration and trade secrets to protect technologies.
- The mere exposition of the advantages that a new technology will have does not mean the loss of the “novelty” in the matter of patents, as long as the technical solution details are not revealed.
- Participation in a trade fair must be planned in advance, to have all intellectual property assets ready and protected.





Case Study 2

- Assignment of a malicious trademark

The Background

An EU SME tried to use a trademark assignment to recover its rights from a trademark squatter who owned over 90 trademarks, more than half of which were copied from foreign brands. The EU SME filed a request for assignment after signing an assignment agreement with the trademark squatter.



Action taken

- (1) The CNIPA requested the evidence of use from both the assignor and the assignee.
- (2) The SME provided proof of use in a Chinese online shop. The trademark squatter has no evidence of use.
- (3) The CNIPA refused the assignment based on insufficient proof of use, and the bad faith of the assignor.



Case Study 2

- Assignment of a malicious trademark



Lesson learned

- Trademark assignment may not be an ideal action to overcome the malicious trademark any more.
- Before trademark assignment, the SME should run a background search to see if the seller has bad faith.
- To combat the malicious trademark, consider opposition, non-use cancellation, invalidation, etc.
- Well preserve the evidence of use of SME's brand in China.
- Register trademark in China as soon as possible.



Case Study 3

- Combatting counterfeiting in international markets

The Background

An EU SME in F&B industry found counterfeit products in Middle East. The counterfeits similar brand name, the products are the same kind, potentially misleading the consumers.

The counterfeits have been produced in China.

The SME wants to stop the Chinese manufacturers from infringing.



Action taken

The SME contacted Helpdesk.

- For [international TM](#), the registration certificate in Chinese is necessary. CNIPA will issue one upon request.
- To contact IP lawyers in China to [collect evidence](#) before taking any enforcement actions. After the evidence collection, the SME can decide which legal remedies to choose.
- To record their TM rights with the [China Customs](#).

Outcome

- Within 1 month, the SME received the TM certificate in Chinese with support of IP lawyer.
- The IP lawyer also recorded the trademark with the China Customs.
- Monitor the production of counterfeits and decide the evidence collection later.

Lesson learned

- It is advised to apply for a [registration certificate in Chinese](#) at the CNIPA upon registration, for international TM.
- Recordal of the trademark with the [China Customs](#) is not a pre-requisite, but it could be an efficient solution to identify and stop the counterfeits from China reaching your other target markets.
- [Evidence collection](#) is time and energy consuming, but it is the most important step in enforcing your IP rights when your IP is infringed. Consult with IP experts in China.

05 | Take-away messages



- ✓ Audit your IP assets and obtain IP protection. For trademark and patent, no registration means no protection in China.
- ✓ Taking various measure to protect confidential business information as trade secrets.



- ✓ Study the laws and regulations involved in your industry.
- ✓ Conduct due diligence to your potential business partners.
- ✓ Collect and preserve the evidence before taking any enforcement actions.
- ✓ Consult the IP lawyers and experts in China.



- ✓ Contact the China IP SME Helpdesk ***question@china-iprhelpdesk.eu***

1-on-1 consultations



Meet Lisa Lu – your IP Business Advisor

Book the time slot via the QR code

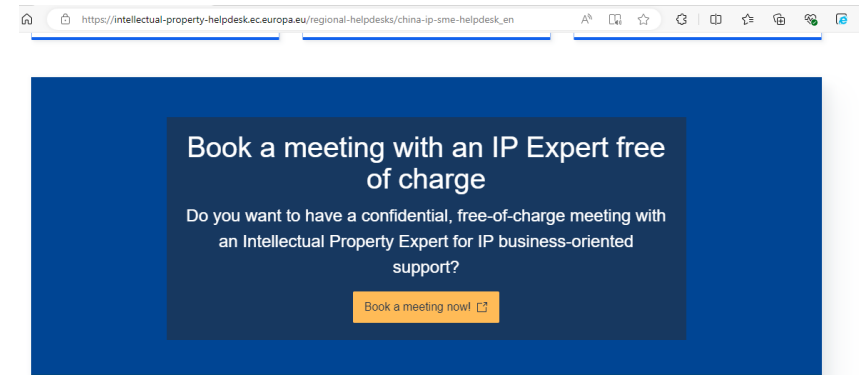


via Helpdesk website

<https://intellectual-property-helpdesk.ec.europa.eu/>

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