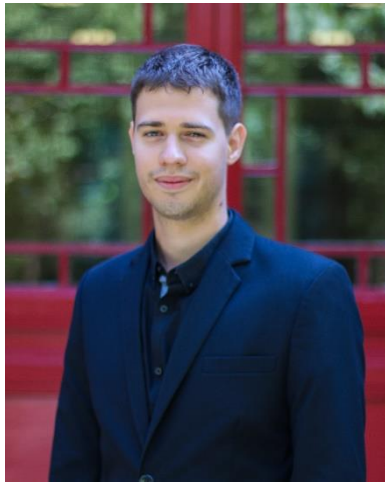


China IP SME Helpdesk



Peter Sczigel

**Project Executive
China IP SME Helpdesk**

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FACTSHEET

- THE FACTS: Business in Mainland China for EU Companies**
 - Size of Market
 - Key INDUSTRY SECTORS
- 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?
- IP Rights in Mainland China THE BASICS**
 - Copyright
 - Patents
 - Trade Marks
 - Geographical Indications (GIs)
 - Trade Secrets
- Using CUSTOMS to block counterfeits**
- Enforcing of rights**
 - Administrative actions
 - Civil Litigation
 - Criminal Prosecution
- RELATED LINKS and Additional Information**



IP Factsheet: Mainland China

CHINA IPR SME HELPDESK



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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



'What you need to know to protect your IP in China: the Basics'

Valentin de le Court
19 May 2021

Valentin de le Court



DALDEWOLF

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Valentin de le Court is a Belgian qualified lawyer with fifteen years of experience in the intellectual property field, including four years of on the ground practice in China. His area of expertise covers contentious and non-contentious IP matters relating to innovation with a strong focus on patent law, trade secrets protection and management, and China related IP strategies and technology transfer. Over the past years Valentin has assisted European MNCs and SMEs active in a wide range of sectors (semiconductors, automotive, mobile gaming, oil & gas, digital communication, F&B, fashion, medical device and design) with their China related IP issues. Today he co-heads the IP/IT team and leads the China Desk at DALDEWOLF, a Belgian business law firm. Valentin is fluent in French, Dutch and English.

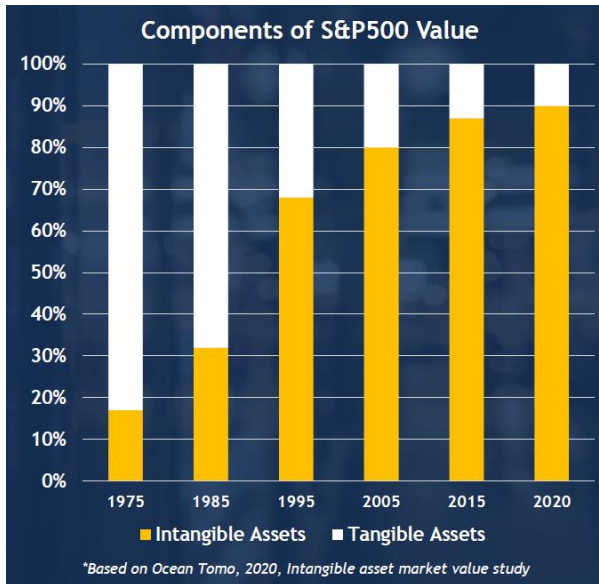
Overview

I. IP IN CHINA - The Context

II. HOW TO PROTECT YOUR INTANGIBLES WHEN ENTERING THE CHINESE MARKET? Plan ahead

III. TO CONCLUDE

Introduction: THE GROWING IMPORTANCE OF INTANGIBLE ASSETS IN TODAY'S ECONOMY



- 1975 → intangible assets = 17% of corporate value
- 2020 → intangible assets = 90% of corporate value
- Intangible assets are protected through IP rights & trade secrets

SMEs and startups often

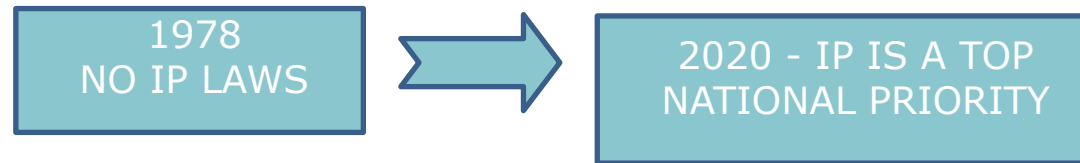
- Perceive IP as a nice to have
- Perceive IP as a cost → should **approach it as an investment**

→ **Treat IP as a profit center...** even more so when it comes to doing business with China

I. 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 main IP international treaties and agreements



3° A **COMPLETE SET OF CHINESE IP LAWS IN PLACE**

DOMESTIC FILINGS

#2 - China is the No. 1 country for PATENT and TRADEMARK 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 image shows a screenshot of a Financial Times article. The main headline is "China smashes world patent record with 1m filings in a year". Below the headline, there is a sub-headline: "UN hails 'extraordinary' innovation but sceptics say figures skewed by state targets". To the right of the article, there are three red-bordered boxes containing text extracted from the article:

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.

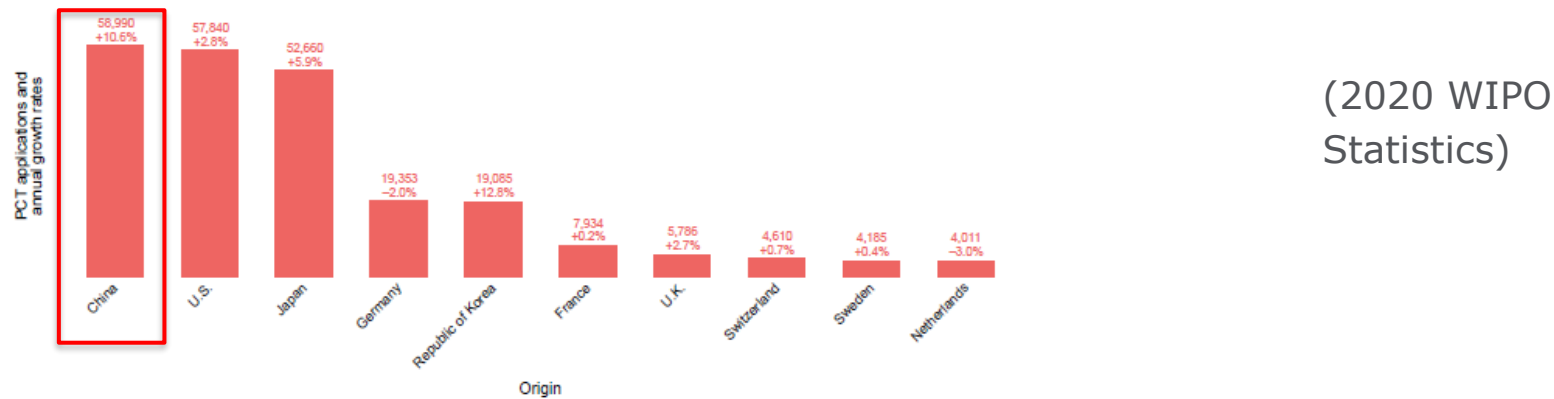
- 1.542.500 CN invention patent applications in 2018

INTERNATIONALISATION

#3 - China became the No. 1 PCT APPLICANT in 2019

Applicants residing in China, Japan and the U.S. filed by far the most PCT applications.

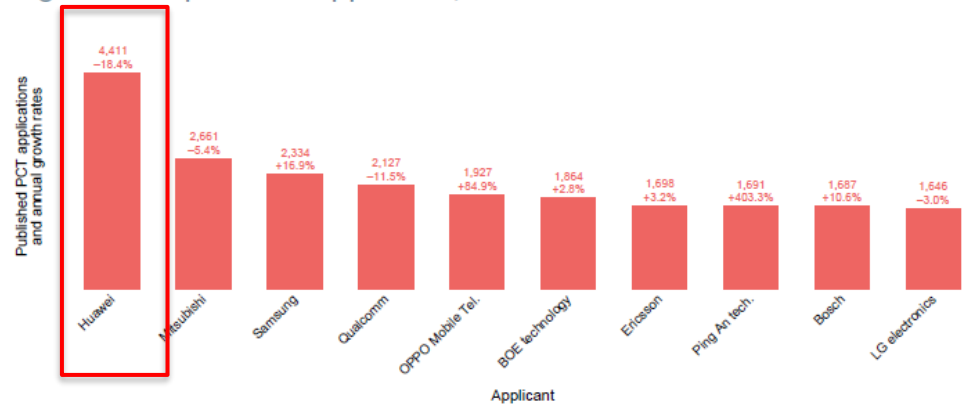
Figure 2 – PCT applications for the top 10 origins, 2019



Source: WIPO Statistics Database, March 2020.

Huawei Technologies remained the top PCT applicant in 2019.

Figure 4 – Top 10 PCT applicants, 2019



Source: WIPO Statistics Database, March 2020.

With Huawei as the top PCT applicant

INTERNATIONALISATION (2)

In 2020, China was the top TM applicant at the EUIPO, followed by Germany, the US, Italy and Britain.

https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/the_office/statistics-of-european-union-trade-marks_en.pdf



2. EUTM Applications

2.5. Top 25 Countries

Solicitudes - Anmeldungen - Applications - Dem

DESGLOSE POR PAISES/TERRITORIOS - AUFSCHLÜSSELUNG NACH LÄNDERN/TER

VENTILATION PAR PAYS/TERRITOIRES - RIPARTIZION

	Estados States	Staaten Etats	Stati	2020		Estados States	Staaten Etats	Stati	2021
1	(CN) - CHINA (THE PEOPLE'S REPUBLIC OF)			28,818	1	(CN) - CHINA (THE PEOPLE'S REPUBLIC OF)			12,901
2	(DE) - GERMANY			24,977	2	(DE) - GERMANY			9,622
3	(US) - UNITED STATES OF AMERICA			17,446	3	(US) - UNITED STATES OF AMERICA			6,312
4	(IT) - ITALY			14,002	4	(IT) - ITALY			5,085
5	(GB) - UNITED KINGDOM			11,324	5	(ES) - SPAIN			3,876

TOP IP LITIGATION COUNTRY

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

- 16,010 patent litigation cases introduced in 2017 >< maybe 50 in Belgium (?)
- IP litigation cases are mostly domestic (CN >< CN): 96% between 2011 to 2014
- Increase in cases involving foreign businesses
 - More cases against foreign businesses
 - More cases between foreign businesses



THE STATE OF INNOVATION

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

- China is already **an important innovation center**

“The copycat era is behind us,” says venture capitalist Kai-Fu Lee, former head of Google China. “We are way beyond that.”

**GLOBAL
INNOVATION
INDEX 2020**



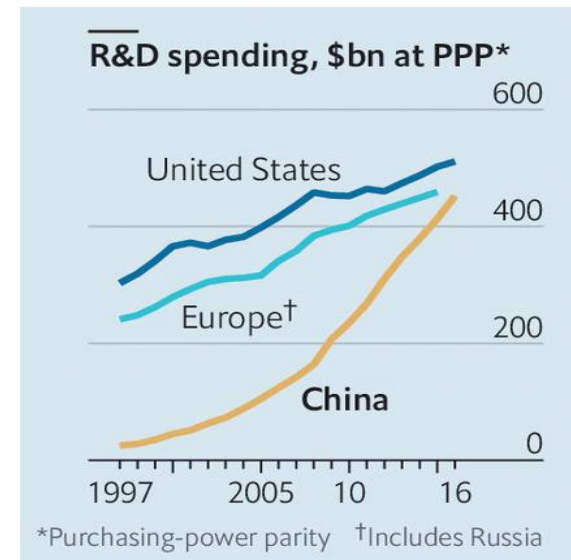
- GII ranks world economies according to their **innovation capabilities**

Rankings of China (2018–2020)

	GII	Innovation inputs	Innovation outputs
2020	14	26	6
2019	14	26	5
2018	17	27	10

Rankings of Belgium (2018–2020)

	GII	Innovation inputs	Innovation outputs
2020	22	21	25
2019	23	21	24
2018	25	21	23



*Source: The Economist
12-18 Jan.2019*

THE STATE OF ENTREPRENEURSHIP

#6 – A new generation of homegrown entrepreneurs, evolving within a unique ecosystem

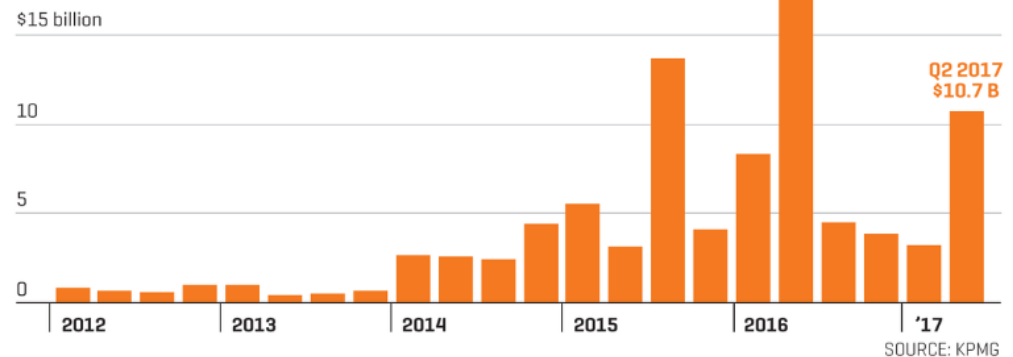
UNIQUE ECOSYSTEM

- Scale of China's market
- CN consumers → enthusiastic adopters of new technologies
- Developing market → no legacy infrastructure (e.g. mobile payments)
- Less stringent privacy

VENTURING INTO CHINA

The amount of venture capital invested in Chinese startups has soared in recent years. The country's "unicorns" benefit from its huge and growing market of tech-friendly consumers.

VENTURE CAPITAL INVESTMENT IN CHINA BY QUARTER



INNOVATION & IP = A POLITICAL IMPERATIVE

#7 - 14th FIVE-YEAR PLAN for 2021-2025

*"The 14th Five-Year Plan does not aim for economic decoupling. But it does 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>

- Prioritizing quality growth over quantity growth
- Goal to become a self-reliant technological powerhouse (end reliance on foreign technology)
- Become the global leader in strategic emerging industries
- **Become technology independent**

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

The OPPORTUNITIES

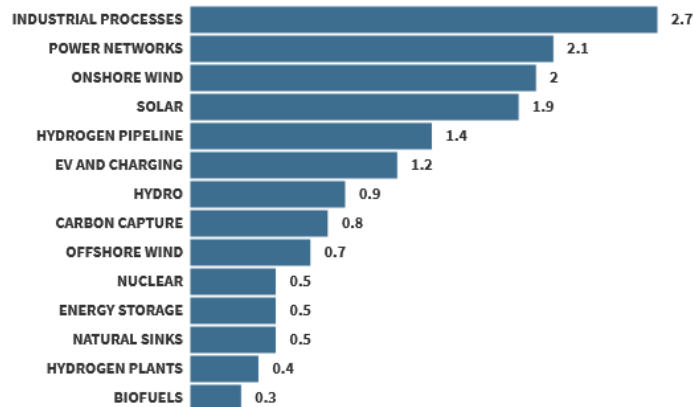
#8 – China's need for advanced technology (still) remains strong

China's new growth story: Linking the 14th Five-Year Plan with the 2060 carbon neutrality pledge

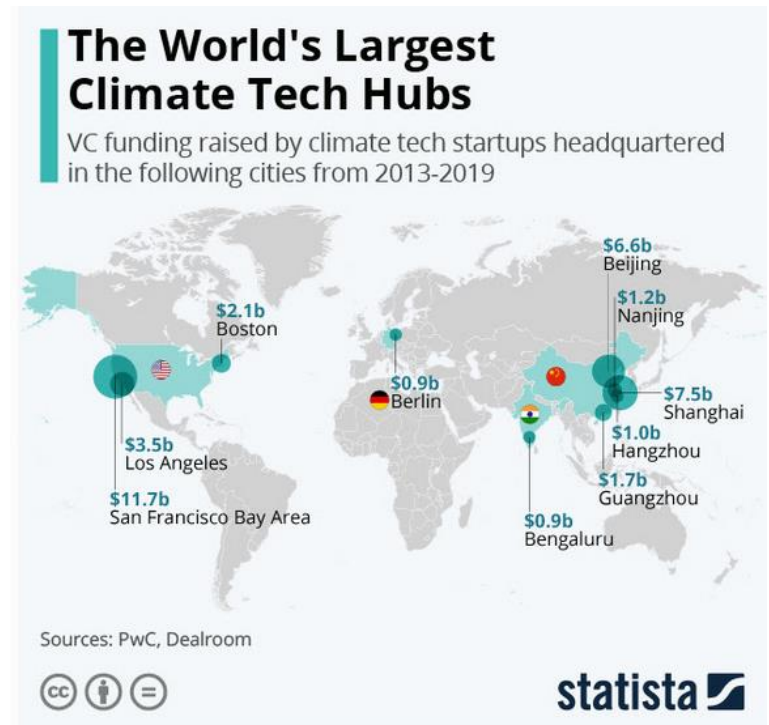
Policy publication on 11 March, 2021

China will need to invest \$16 trillion by 2060 to reach net zero

Estimated investments in trillions of US dollars for the country to reach its emissions goals in the next 40 years



Source: Goldman Sachs





LEARNINGS

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>



LEARNINGS

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

- Complete and advanced legal system for protecting IP
- Widely used
- Accessible 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

LEARNINGS



4. IPR is now ESSENTIAL FOR CHINESE BUSINESSES

- More IP aware (IP = competitive advantage = value)
- More IP rich
- **China's stake in the IP system grows**
 - Political will to improve the IP system
 - Call from the business to improve the system

**World
Trademark
Review.**

Search

[Home](#) [Magazine](#) [Blog](#) [Market intelligence](#) [Top TM professionals](#) [Research](#) [Legal updates](#)

Top Chinese business leaders unite in call for stricter anti-counterfeiting measures

13
MAR 17

The Telegraph March 8, 2017

News | World

“Many Chinese enterprises have grown to a critical level where they need IP protection as much as foreign companies”

LEARNINGS



5. The strategic imperative to **CLOSE THE TECHNOLOGICAL GAP** creates **OPPORTUNITIES**

- Transition “*from made in China to invented in China*” well on its way
- **End foreign-technology reliance creates OPPORTUNITIES**
 - Focus on tech/industries deemed as strategic by the CN authorities
 - Supply of critical technologies (**technology transfer**)
 - Contract manufacturing and R&D for CN firms
- **Your future in China depends on your competitive advantage and hence, on your IP strategy**

II.

HOW TO PROTECT YOUR INTANGIBLES WHEN ENTERING THE CHINESE MARKET?

STEP 1 - KNOW YOUR IP: perform an IP audit

- Intangible assets are **non-physical (difficulty to identify)**
- **SMEs often lack overview of their IP assets**
 - (1.) what are the IP assets of the company
 - (2.) what value of IP assets
 - (3.) how is your competitive advantage protected?
- **Conduct an IP audit**
 - ❖ **Are your products / technologies protected? How (IP or trade secrets)?**
 - ❖ Is the protection relevant businesswise (revenue streams)?
 - ❖ Ascertain legal status, territorial coverage, value, related risks



STEP 2 – UNDERSTAND WHAT TO PROTECT AND HOW

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

- **Assess territorial coverage**
 - ❖ what are your markets (current, future, potential)?
 - ❖ what are your competitor's markets?
 - ❖ where are your potential investors?
 - ❖ where will you manufacture or outsource development?

- **Where does China fit?**

Align IP strategy with business strategy

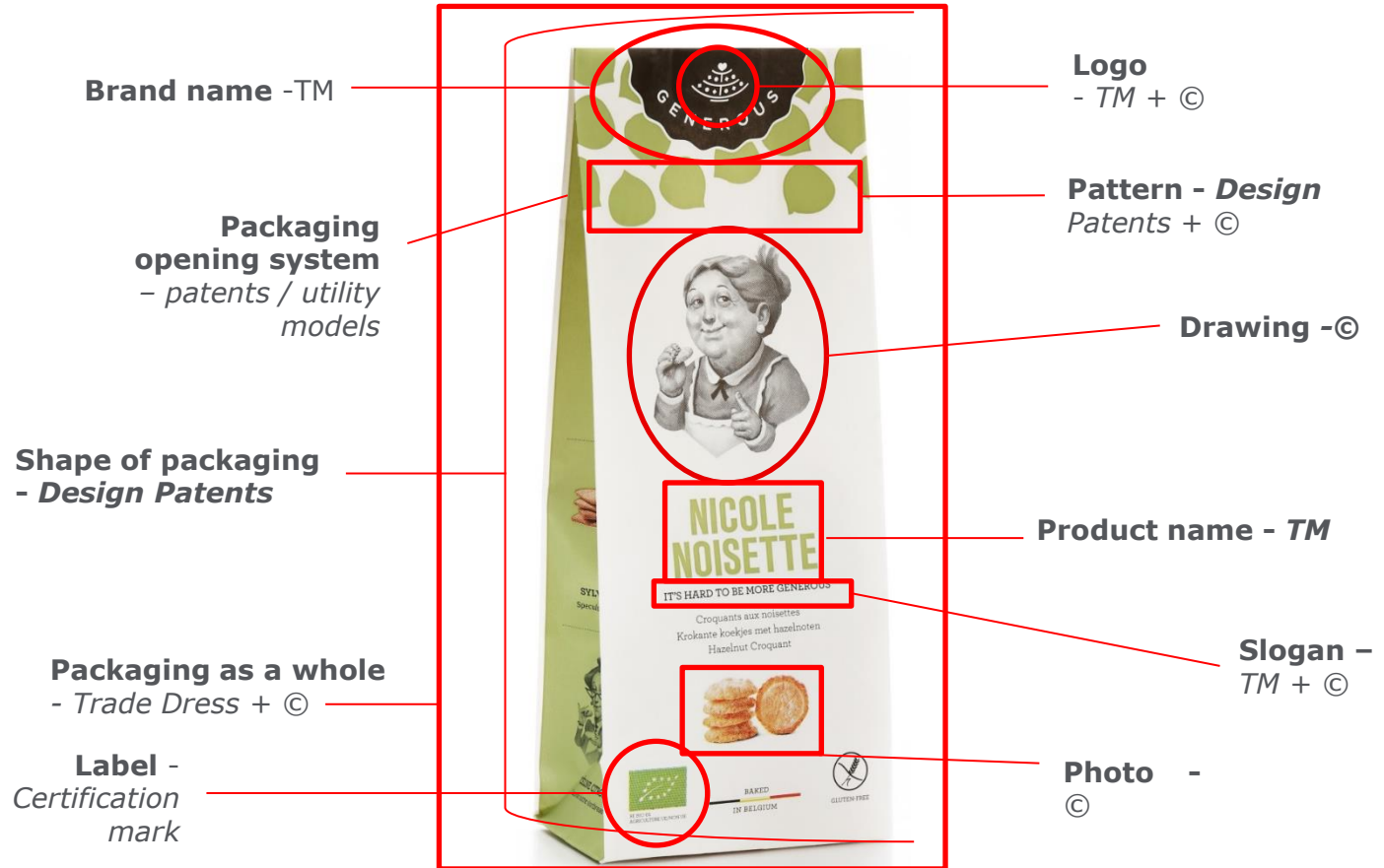
STEP 3 - Create a BUNDLE OF RIGHTS: different IPRs serve different goals

- **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)
- **Designs** - protect the external aspect of products
- **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)

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



→ Layer your IP (cost-effective solutions)



STEP 4 - HAVE ENFORCEABLE IP RIGHTS

➤ **TERRITORIALITY of IPR**

- Cover countries where you trade, manufacture, exhibit
- Countries of competitors + possible investors
- Strategic analysis needed



➤ **REGISTRATION is needed (!)**

- ❖ No automatic protection
- ❖ Register on time (anticipate, plan early)
- ❖ Not applying in another market = FREE LICENSE to use your IP



➤ **ADAPT to the LOCAL SPECIFICITIES**

→ **Be proactive!**

STEP 5 – Protect your TRADE SECRETS

Shared definition of « trade secrets » in major economies (< art.39 trips)

USA 2016

Defend Trade Secret Act

CHINA 2017 + 2019

*Anti-unfair competition law
revised*



EU 2016

*Trade Secrets Directive
2016/943*

BE 2018

*BE law on Trade
Secrets*

REASONABLE STEPS to keep information secret are KEY

- Need to take proactive measures to protect secrecy (protection is not automatic)
- Key to ENFORCE trade secrets (anywhere) : the first thing a judge will check!
- **No reasonable steps = information is no trade secret → loss/ absence of protection**

STEP 6 – Pay attention to IP in your CONTRACTS

- **Key** for successfully protecting your IP abroad

- **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
 - Confidentiality agreements
 - Employment agreements
 - Consultancy agreements
 - ...

TO CONCLUDE

ALIGN YOUR IP STRATEGY WITH YOUR CHINESE AMBITIONS & CHINESE PROJECT

1. EU SMEs with tech./strong brands AND an IP strategy

- More competitive, valuable, more opportunities

2. Be PROACTIVE : have a tailor made IP STRATEGY

- Start early: plan ahead & anticipate
- Define your strategy
- Know your IP (audit)
- 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

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CHINA IPR SME HELPDESK



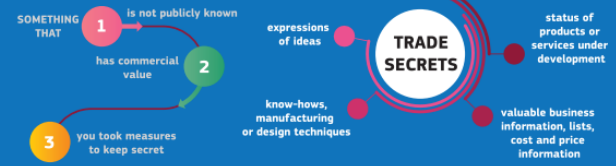
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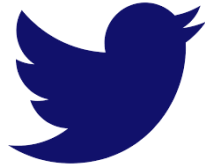
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Stay connected!



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3 working
days

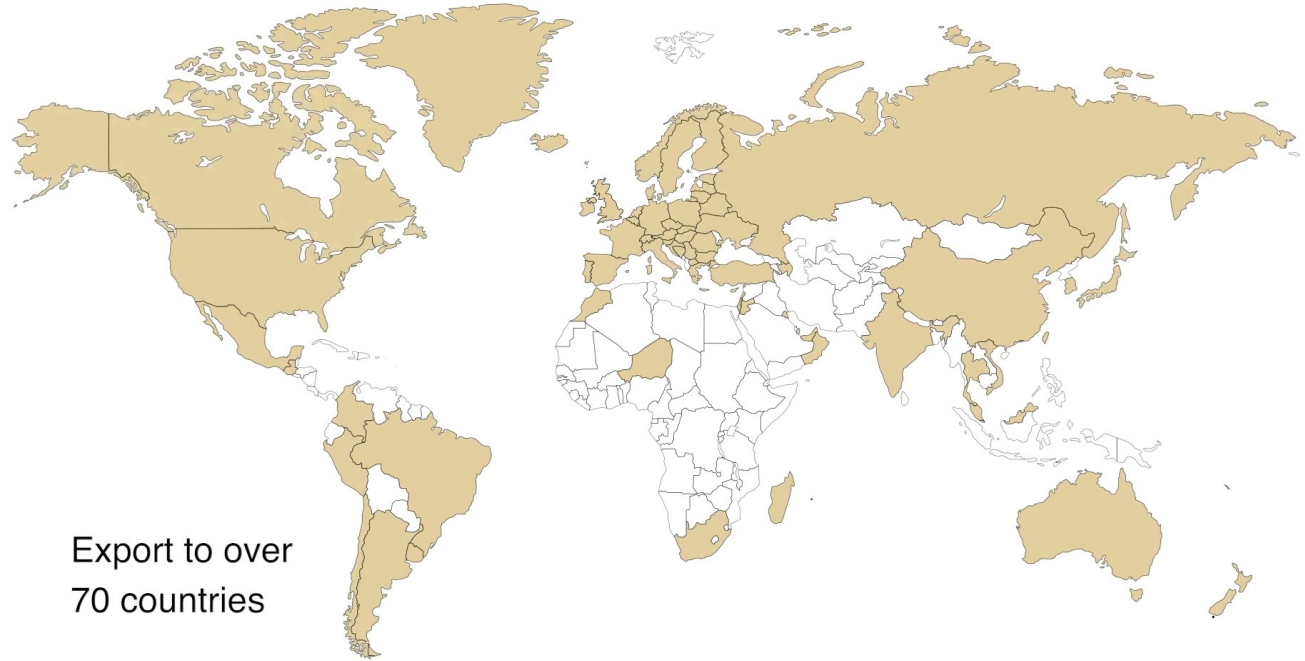
question@china-iprhelpdesk.eu

Secto[®] DESIGN



- Founded 1995 by Tuula Jusélius
- 10+ office employees and 30-40 employees manufacturing
- 25 models, designed by architect Seppo Koho
- Among largest design furniture manufacturers in Finland

Secto[®] DESIGN



Export to over
70 countries

- Over 90% of production exported
- Global network of representatives
- Subsidiary in Sweden and USA
- Europe largest market

- About 100 infringement cases handled per year
- 50-150 infringing e-commerce listings per week
- About 45 design registrations
- More than 90 trademarks
- Approx. 25 Copyright registrations
- Handful litigations per year



Chinese manufacturer,
Several European incidents

- Notarised investigation report
- C&D Letter
- Signed undertaking and reimbursement of costs

Chinese manufacturer

- Copyright infringement
- Appeal to avoid paying damages
- Cost tens of thousands €
- Damages 1/45th of costs

Chinese manufacturing and
European importer

- Settlement with manufacturer
- 5 years of preparation
- Costs at 6 figures
- Damages 1/10th
- Litigation of importer still ongoing

Thank you!

Tobias Backman

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tel. +358 40 1962 436

