

**INTELLECTUAL
PROPERTY
SYSTEMS:**

**A COMPARISON
BETWEEN
THE EU
AND CHINA**

**18 AUGUST
10:30**



**CHINA IPR
SME HELPDESK**



**法蘭德斯
中国商会** **FCCC
VCKK**

**FLANDERS-CHINA CHAMBER OF COMMERCE
VLAAMS-CHINESE KAMER VAN KOOPHANDEL**



**EU-China
Business Association
欧盟中国贸易协会**

Waiting for the organisers, the webinar will begin shortly...

Moderator



Moderator:

Peter Sczigel

**Project Executive
China IP SME Helpdesk**

peter.sczigel@china-iprhelphdesk.eu

Webinar Interaction Tool

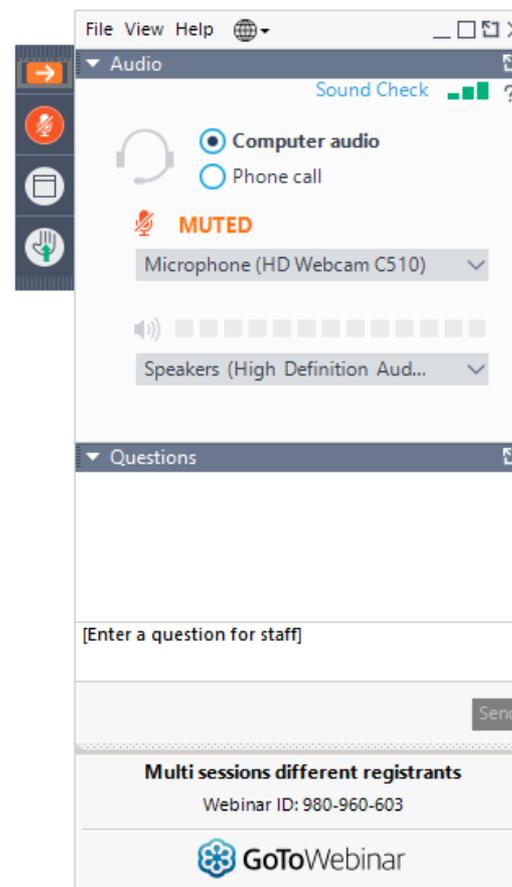
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FACTSHEET

- 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



For free, confidential, business-focused IP advice within three working days E-mail: questions@china-iprhelpdesk.eu

Protecting Your Trade Secrets in China

Prevention is the key to protection.



WHAT EXACTLY CAN BE A TRADE SECRET



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.



DON'T FORGET YOUR EMPLOYEES

CONFIDENTIAL

- 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



Speakers



Gwenn Sonck

Executive Director

Flanders-China Chamber
of Commerce / EU-China

Business Association



Simon Cheetham

IP Expert

China IP SME Helpdesk

Agenda

<i>Time</i>	<i>Title</i>	<i>Speaker</i>
10:30 – 10:35	Introduction to the Webinar	<i>Peter Sczigel, China IP SME Helpdesk</i>
10:35 – 10:40	Presentation of the Flanders–China Chamber of Commerce / EU-China Business Association	<i>Gwenn Sonck, FCCC/EUCBA</i>
10:40 – 11:15	Intellectual Property Systems: A comparison between the EU and China	<i>Simon Cheetham, China IP SME Helpdesk</i>
11:15 – 11:30	Q&A	



Introduction to the Flanders-China Chamber of Commerce / EU-China Business Association

Gwenn Sonck

gwenn.sonck@flanders-china.be

Flanders-China Chamber of Commerce (250 members)



FCCC FOUNDING MEMBERS



FCCC STRUCTURAL PARTNERS



IN COOPERATION WITH



- **Advice and expertise:** the FCCC 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 FCCC 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 FCCC 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 FCCC also plays an important role at a European level.

The membership fee for 2021 is:

Small and Middle enterprises: €435,00 (VAT excl.)

Large enterprises: €1.080,00 (VAT excl.)

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

EU-China Business Association



The EU-China Business Association (EUCBA) is the EU-wide federation of national non-profit business organizations in the European Union with specialization and particular expertise in exchange of knowledge on investments and trade with China. At current, EUCBA unites 20 members in 20 countries representing more than 20,000 companies – large, medium, and small, in all branches of industry, commerce and the service sector.



- EUCBA **supports the China business interests** of its members and **acts as a channel of communication with government institutions of the EU and China.**
- The EUCBA adds value to the work of its members **by EXTENDING national work to a European level**
- The EUCBA aims to **facilitate the exchange of information**, views and experiences among its member organisations

www.eucba.org – contact: gwenn.sonck@eucba.org



Intellectual Property Systems: A comparison between the EU and China

Simon Cheetham

Presentation Theme –

Tips and best practices for IP Protection in China – EU China Comparison

- ***IPR in China & the drive for innovation***
- *China – EU Comparison*
- *Case study*
- *IP for an evolving economy*
- ***Feedback/Questions/Discussion***



Drive for Innovation



2006, China set a goal to “Establish an Innovative Country”



This became a **National IP Strategy** in 2008.



Changing from the so-called copycat nation to **innovation nation**



China firms dominate areas of tech including payments, drone manufacturing & AI



Launched by Premier Li Keqiang in 2015, the “**Made in China 2025**” strategy aims to guide the country’s industrial modernisation, including the substitution of foreign technology with innovation developed on the mainland.



“Innovation is the primary force guiding development,” said President Xi Jinping at the World Economic Forum in Davos, Switzerland. “**We need to relentlessly pursue innovation**”.

China IP - Fast Progress



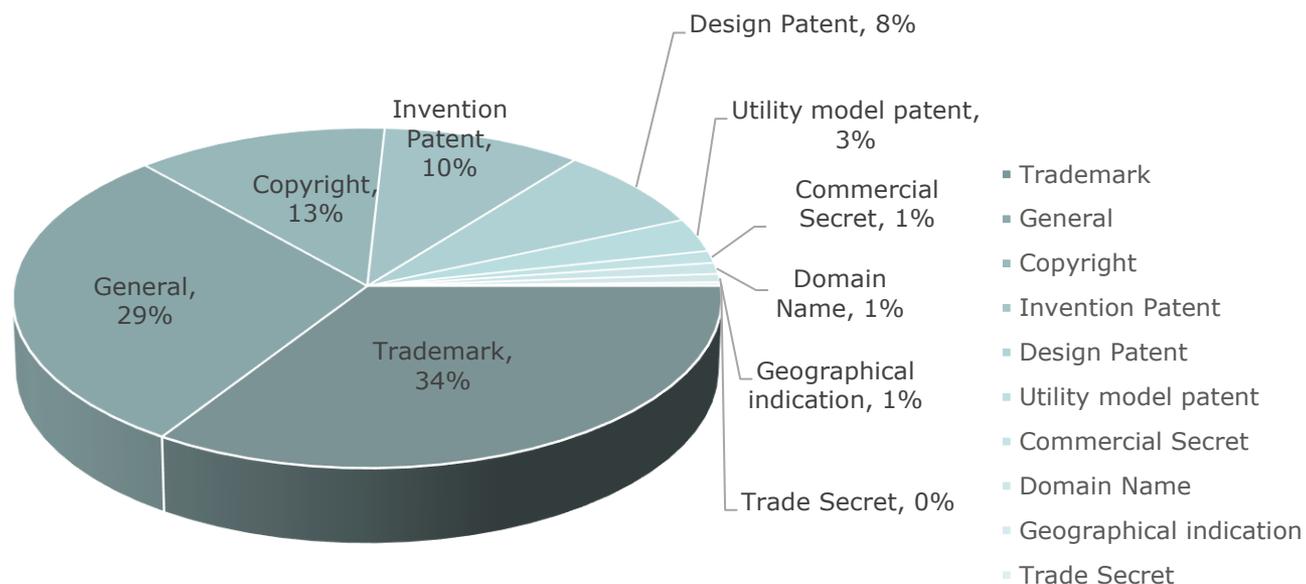
- Restructuring of IP registration, management & enforcement governing bodies in China
- **Patents**
 - Amended Patent Examination Guidelines – 1 November 2019
 - New AI-Related Revisions - 1 February 2020
 - US-China Phase I Trade Agreement (signed 15 January 2020)
- **Trade Secrets**
 - New Foreign Investment Law - 1 January 2020
 - Anti-Unfair Competition Law - 23 April 2019
- **Geographical Indications**
 - US-China Phase I Trade Agreement - safeguards for generic terms; Option for US to oppose GIs
- **Trademarks**
 - Anti-unfair Competition Law - 23 April 2019
 - Impact of new Trademark Law - 1 November 2019
 - Malicious trade mark registration:
 - invalidate or oppose hostile marks based on the grounds of abnormal filing ✓
 - more interventions by companies in the registration process ✗

An Overview of Rights issues – in China

Trademark issues account for most enquiries at the Helpdesk

General IP strategy, copyright & patent questions also common

Input also from panel of experts



China – EU Comparison Overview

Mainland China

- *In general registered IPR is protected*
- *IPR only protected from registration*
- *IPR is territorial*
- *Patents & trade marks extendable internationally*
- *Registration process*

Europe

Some unregistered IPR can be enforced

Conditional protection from filing

IPR is territorial

Patents & trade marks extendable internationally

Registration process

China – EU Trademarks Comparison

Mainland China

- *Visual & sound trade marks*
- *Register Chinese trademarks too*
- *It takes 9-12 months to register*
- *Madrid system*
- *Int'l classification BUT additional sub-classes*

Europe

Visual, sound & scent trade marks

Register in one language only

Community reg takes 6-9 months, national reg longer

*Madrid system
Int'l classification*

China – EU Patents Comparison

Mainland China

- *Invention patent takes 3-5 yrs / lasts 20 yrs*
- *Invented in China = confidential exam*
- *Utility models very common takes ≤ 1 yr*
- *PCT filing route is available*

Europe

Invention patent lasts 20 yrs

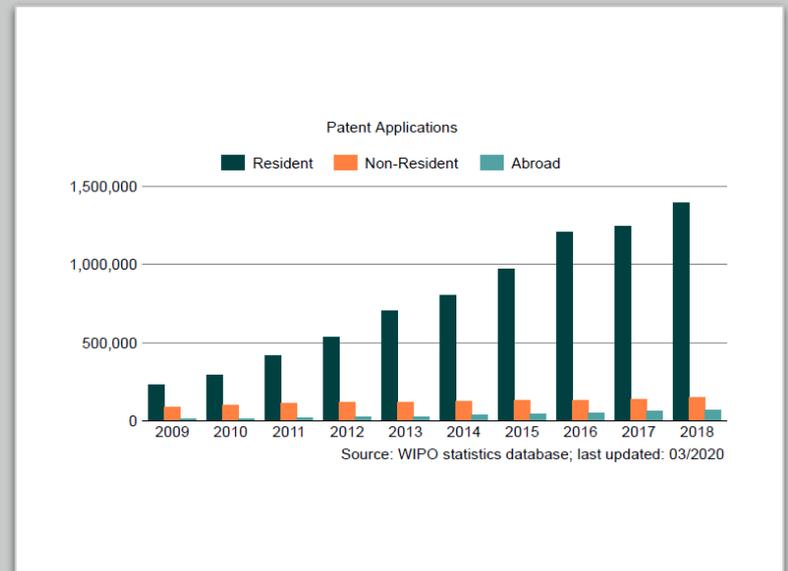
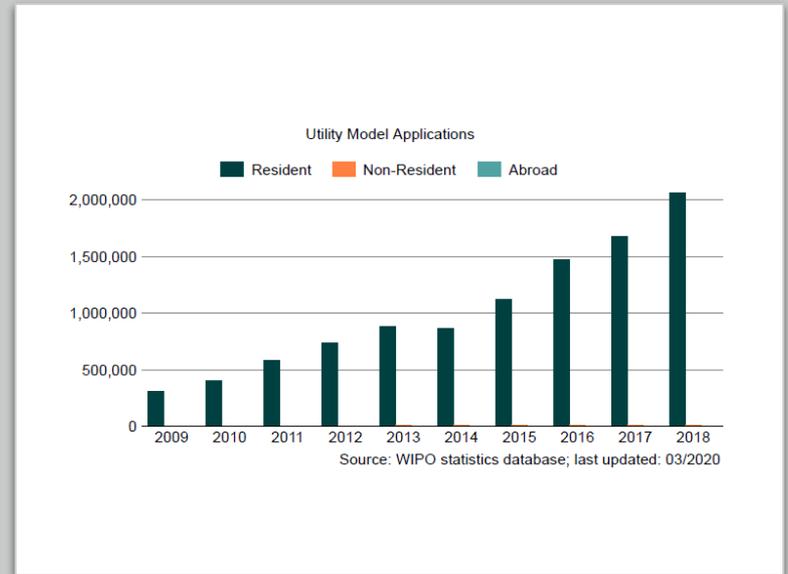
No mandatory confidential exam

*less common in Europe
PCT filing route is available*

China Patents

Article 9 of the Chinese patent law:

"where the same applicant applies for a utility model patent and an invention patent with regard to the same invention on the same day, if the utility model patent acquired earlier is not terminated yet and the applicant declares his waiver of the same, the invention patent may be granted".



China – EU Other Rights Comparison

Mainland China

- *No unregistered design protection*
- *Registered designs protected 15 yrs*
- *Copyright protected from date of creation – best to register*
- *Databases protected as compilations*
- *Trade secrets protected*

Europe

Unregistered designs protected 3 yrs

Registered designs protected 25 yrs

Copyright protected from date of creation – keep proof

*Databases protected as intellectual creation++
Trade secrets protected*

China – EU Enforcement Comparison

Mainland China

- *IPR holder carries burden of proof*
- *Court decides time limit for evidence*
- *Trade secrets enforced in court & admin route*
- *Admin actions fast & cost effective*
- *Copyright cases via on-line courts*

Europe

Courts can help collect evidence

Evidence presented thro whole hearing

Trade secrets enforced in court only

N/A

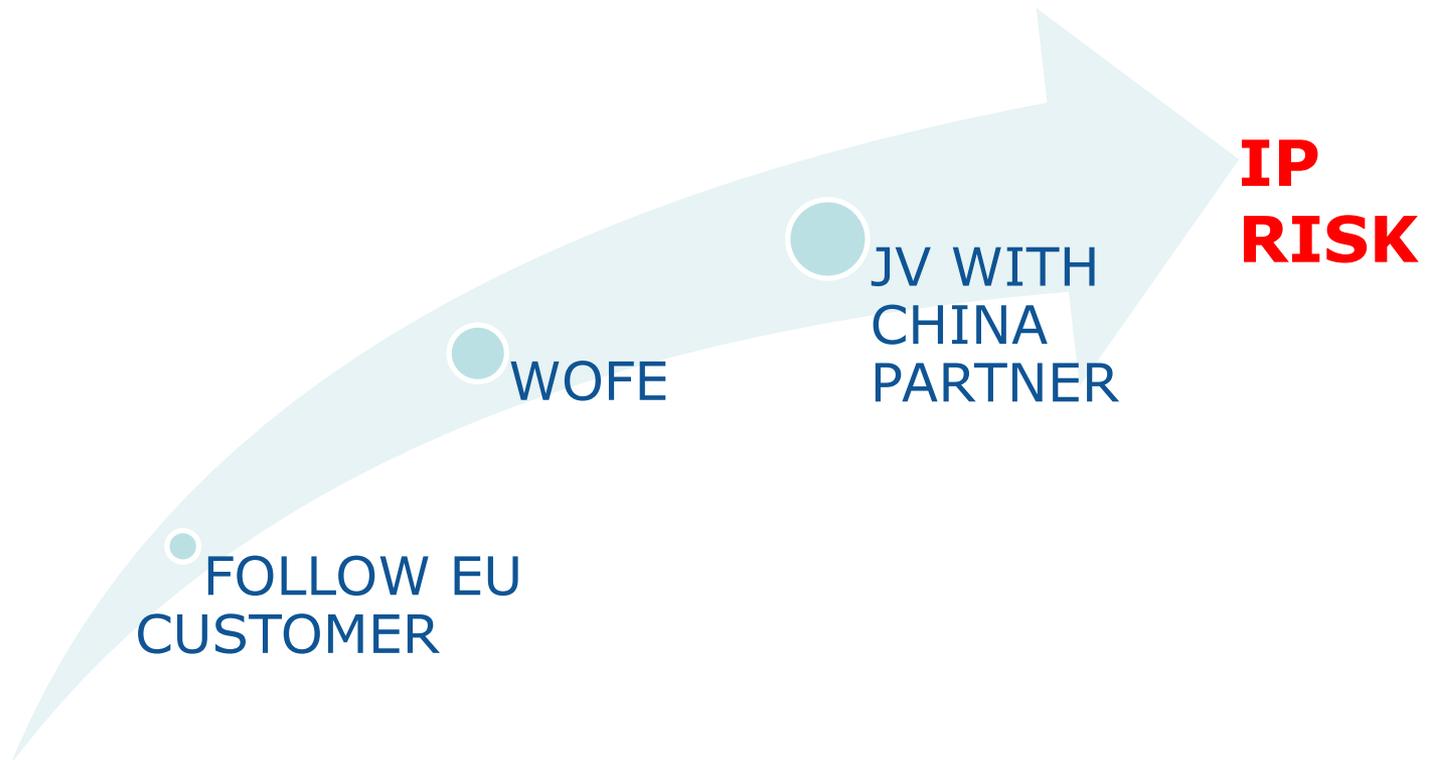
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Case Study – using blockchain



- *Professional Photographer:*
 - **Studio in EU, branch in China**
 - **Used blockchain to record copyright**
 - **Identified infringer**
- *Cost effective resolution:*
 - **Filed case via Internet Court**
 - **No need to attend in person**
 - **Blockchain evidence of IPR**
 - **Fast outcome, damages paid**

China Market Access for SMEs



IP Transfer in a connected world: what is your strategy for each point of contact?



Finding the right partner



Precautionary measures:

- *Patents*
- *Minimised technical information release*
- *Pre-agreement*
- *References and due diligence*
- *Speak to other licensors/vendors*
- *A good, tight agreement & clearly define the territory*

Non-Disclosure Agreements (NDAs)

- *Use NDAs to establish IP protection position at start*
- *Have NDA already drafted*
- *Balance practical considerations with IP protection Consider multiple NDAs*
- *Key clauses:*

Non disclosure (incl. 3 rd parties)	Scope of use	Non-solicitation
Non-compete	Non-assignable	Disclosure procedures
Disposal	Need to know principle	Standard of care
IP Ownership	Employees	Enforcement obligations
Audit rights	Governing law	Dispute resolution

Licensing and Tech Transfer

- *Can license IP to third parties: exclusive / sole / non exclusive*
- *Licensors should impose controls on quality in licences*
- *Trademarks - File licence with CTMO*
- *Can assign registration or application. Assignment must be recorded at CTMO*
- *Tech transfer via patent assignment – prompt recordal; co-ownership **not** recommended*
- *Tech transfer via licensing – **get help on contract** & note cannot prohibit tech development; also ownership of new rights and improvements*
 - General rule – person who makes improvement owns it
 - Otherwise agree (in writing) who will own any improvements

Questions?

HELPLINE

free, fast & confidential

3 ^{working} *days*

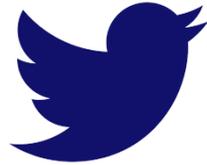
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CHINA
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