

UNITED STATES
PATENT AND TRADEMARK OFFICE

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The Patent Office and China: 130 Years of Advocacy and Engagement

Department of Commerce: Around the Bureaus Speaker Series
February 2, 2016

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U.S. Patent and Trademark Office



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USPTO's China Team

- Washington, DC, Beijing, Shanghai and Guangzhou
- 12 US lawyers, 5 Chinese lawyers
- Collectively, over 200 years experience in Chinese legal issues; 150 years in Chinese IP issues
 - Mark Cohen – Senior Counsel
 - Elaine Wu – Patents/Pharmaceutical Matters
 - Others: Trademarks, Copyright, Enforcement, etc.
 - + China Resource Center
- IP Attachés in China
 - Joel Blank, Beijing; Michael Mangelson, Shanghai; Timothy Browning, Guangzhou.



ASIAN BUSINESS NEWS

Sisyphus in China: U.S. Lawyer's Antipiracy Task Is Endless

By **NEIL KING JR.**, Staff Reporter of THE WALL STREET JOURNAL

Updated July 26, 2005 12:01 a.m. ET

BEIJING -- Mark Cohen, avid cyclist and top U.S. counterfeit fighter in China, has seen a lot of fakes. Fake car windshields, fake drugs, fake Rolex watches, fake Hollywood DVDs. He has seen Chinese companies masquerading, in toto, as American ones.

1. China's involvement with USPTO

UNITED STATES PATENT OFFICE.

YEE FO, OF GRAND LAKE, LOUISIANA.

PROCESS OF PRESERVING SHRIMPS.

SPECIFICATION forming part of Letters Patent No. 310,811, dated January 13, 1885.

Application filed July 2, 1884. (No specimens.)

To all whom it may concern:

Be it known that I, YEE FO, a subject of the Emperor of China, and a resident of Grand Lake, parish of Jefferson, and State of Louisiana, have invented a certain new and useful Improvement in Processes of Preserving Shrimps; and I do hereby declare the following to be a full, clear, and correct description of the same.

This invention relates to a process for preserving that class of shell fish known as "shrimps;" and it consists, first, in placing the same in boiling water containing salt in the proportion of two or two and a half pounds of salt to each bushel of shrimps. The vessel in which these are placed is then covered, and the boiling continued for about one and a half minute, when the cover is removed and the contents of the vessel thoroughly stirred with a paddle or other suitable appliance, so as to thoroughly impregnate the shrimps with the salt. About one minute will suffice for this part of the process. The cover is next replaced and the boiling continued for one and a half or two minutes longer, when the shrimps are removed by means of perforated skimmers or shovels, and spread out on a platform in open air, so as to expose them to the action of the sun. Here they are allowed to remain for two or three days, (according to the heat of the sun,) during which time they are turned and re-turned, say, once in every two hours, so as to insure the removal of all moisture therefrom. When found to be sufficiently dry, they are treaded or walked over by persons wearing moccasins, which process is continued until the heads and shells or heavy scales are detached from the main part of the flesh. By the same devices with which they were placed on the

platform, they are removed therefrom, the scales and light particles being fanned off by throwing them upward through the air to baskets or barrels, somewhat in the same style as that practiced with wheat, rice, and other similar grain. The tails of the shrimps (which are the only edible portions thereof) are next removed and placed in canvas bags. These bags are then closed and beaten on boards or benches, so as to detach the small particles of shell or scale still adhering to the flesh. About five minutes will suffice for this part of the process, when the bags are opened and their contents allowed to drop into sifters in which they are thoroughly agitated, so as to remove any dust or scale still adhering thereto. The shrimps are next removed to a dry-house to await packing for shipment, or are immediately packed in barrels or other packages by placing the same therein in layers, and pressing down each layer until the package is finally filled, when it is headed and ready for shipment.

Having described my invention, what I claim as new, and desire to secure by Letters Patent, is—

The herein-described process for preserving shrimps, the same consisting in first placing the shrimps in boiling water containing salt in the proportion stated, in thoroughly stirring the same for the purpose described, and, finally, in successively drying, treading, beating, and packing the shrimps, substantially in the manner and for the purpose set forth.

In testimony whereof I affix my signature in presence of two witnesses.

YEE FO.

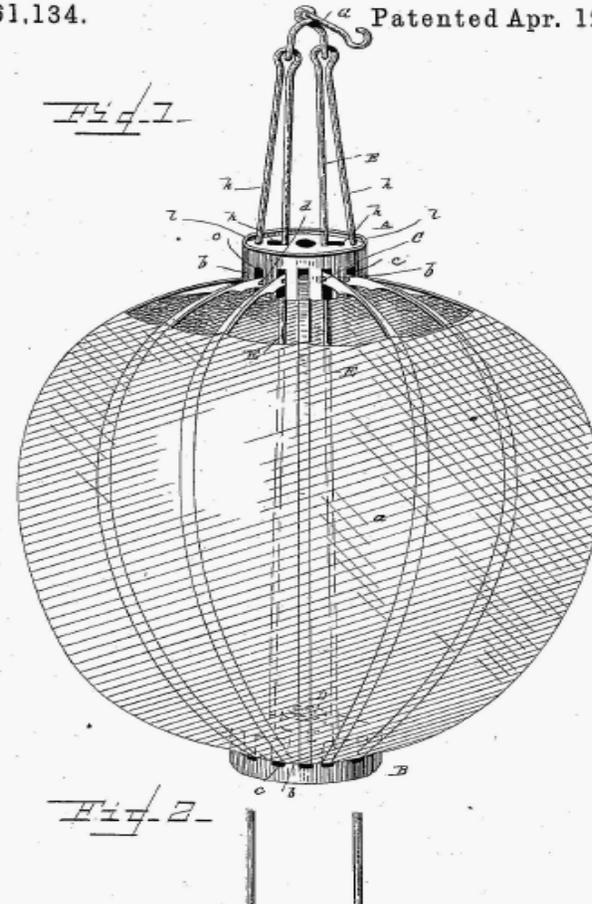
Witnesses:
P. N. JUDICE,
R. C. HILL.

(No Model.)

LAM TACK CHU. CHINESE LANTERN.

No. 361,134.

Patented Apr. 12, 1887.



First Litigation Involving a US Patent Holder (1897)

1st July.
Before T. R. JERNIGAN, Esq., *Consul-General*
Acting Judicially, and Messrs. F. E.
Haskell and A. W. Danforth,
Associates.

MUSTARD AND Co. v. R. H. WRIGHT, THE
AMERICAN CIGARETTE Co., AND THE
AMERICAN TRADING Co.

Judgment was to-day delivered in this
suit instituted by R. W. Mustard and
C. C. Bennett against R. H. Wright and
the American Trading Company, claiming
damages for breach of contract in regard to
the sale of certain Bonsack Cigarette
Machines, and an injunction against the

First License of Chinese Patent to US

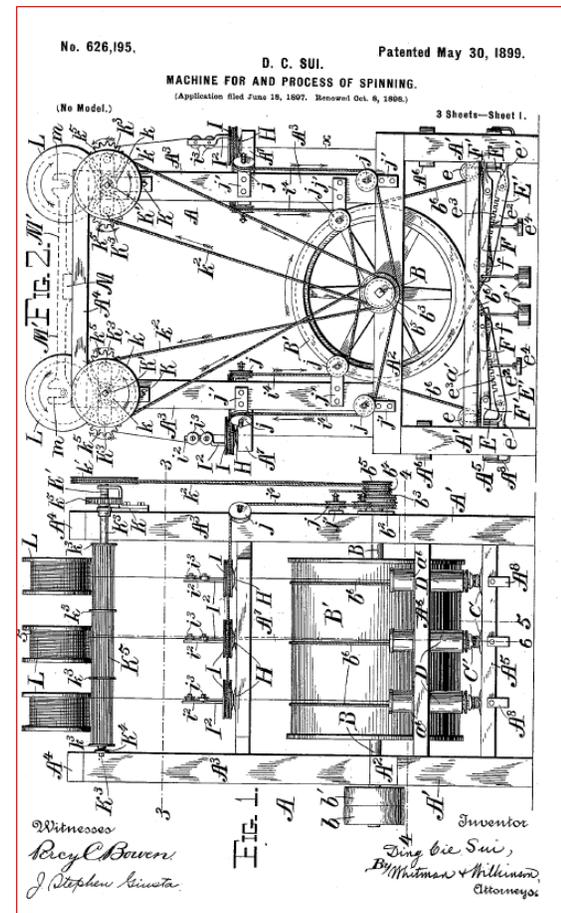
- Corresponding patent in China granted by Zongli Yamen (China's imperial State Department)
- Then-U.S. Secretary of State, John Milton Hay (also President Abraham Lincoln's personal secretary) exchanged communications on the enforcement of these patents in China in 1899



S. Exc. Tchong, S. Exc. Liu, S. Exc. Shui-Tan, Le prince Tehing, S. Exc. Shui, S. Exc. Souans

ÉVÉNEMENTS DE CORÉE. — Le Tsong-li-Yamen, ou Conseil des ministres de l'Empire chinois.

D'après une photographie prise à Pékin, dans le jardin du Palais des ministres, par M. Vapereau fils.



First Chinese Patent of China Resident

UNITED STATES PATENT OFFICE.

DING CIE SUI, OF FOO CHOW, CHINA, ASSIGNOR TO GEORGE S. MINER AND
WILLIAM N. BREWSTER, OF SAME PLACE.

MACHINE FOR AND PROCESS OF SPINNING.

SPECIFICATION forming part of Letters Patent No. 626,195, dated May 30, 1899.

Application filed June 18, 1897. Renewed October 8, 1898. Serial No. 693,046. (No model.)

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The Modern Period



Jordan Baruch, Assistant Secretary for Science and Technology in the US Department of Commerce in 1977, at the start of Jimmy Carter's presidential term. In the 1980's another person working on innovation was Craig Allen, then a student, working on China's technology environment. Craig later served as D/AS in China and is now our Ambassador to Brunei.



China Passes A Patent Law (effective 1985)



China's Patent Office – State Intellectual Property Office (SIPO)

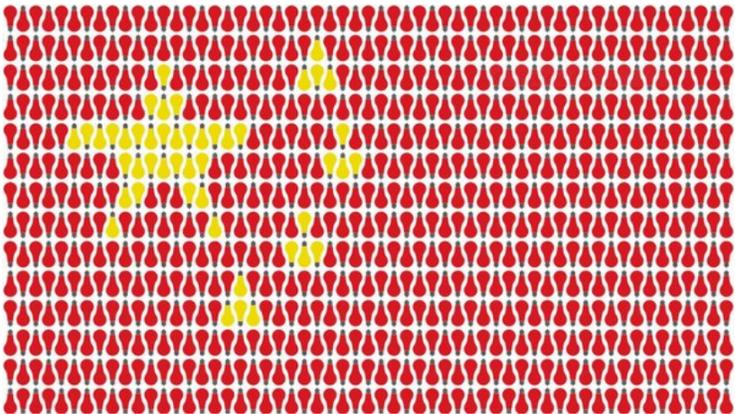
- SIPO grants three types of patents:
 - Invention Patents: similar to USPTO's utility patents.
 - Protects any new technical solution relating to a product, a process or improvement; substantively examined; term of 20 years from filing date.
 - Utility Model Patents: "petty patent"
 - Protects any new technical solution relating to the shape, the structure, or their combination, of a product, which is fit for practical use; not substantively examined; term of 10 years from filing date.
 - Design Patents: similar to USPTO's design patents
 - Protects any new design of the shape, pattern, color, or their combination, of a product, which creates an aesthetic feeling and is fit for industrial application; not substantively examined; term of 10 years from filing date.



2. Impact of China's Innovation Policies

UNBOXED

When Innovation, Too, Is Made in China



Jennifer Daniel

By STEVE LOHR
Published: January 1, 2011

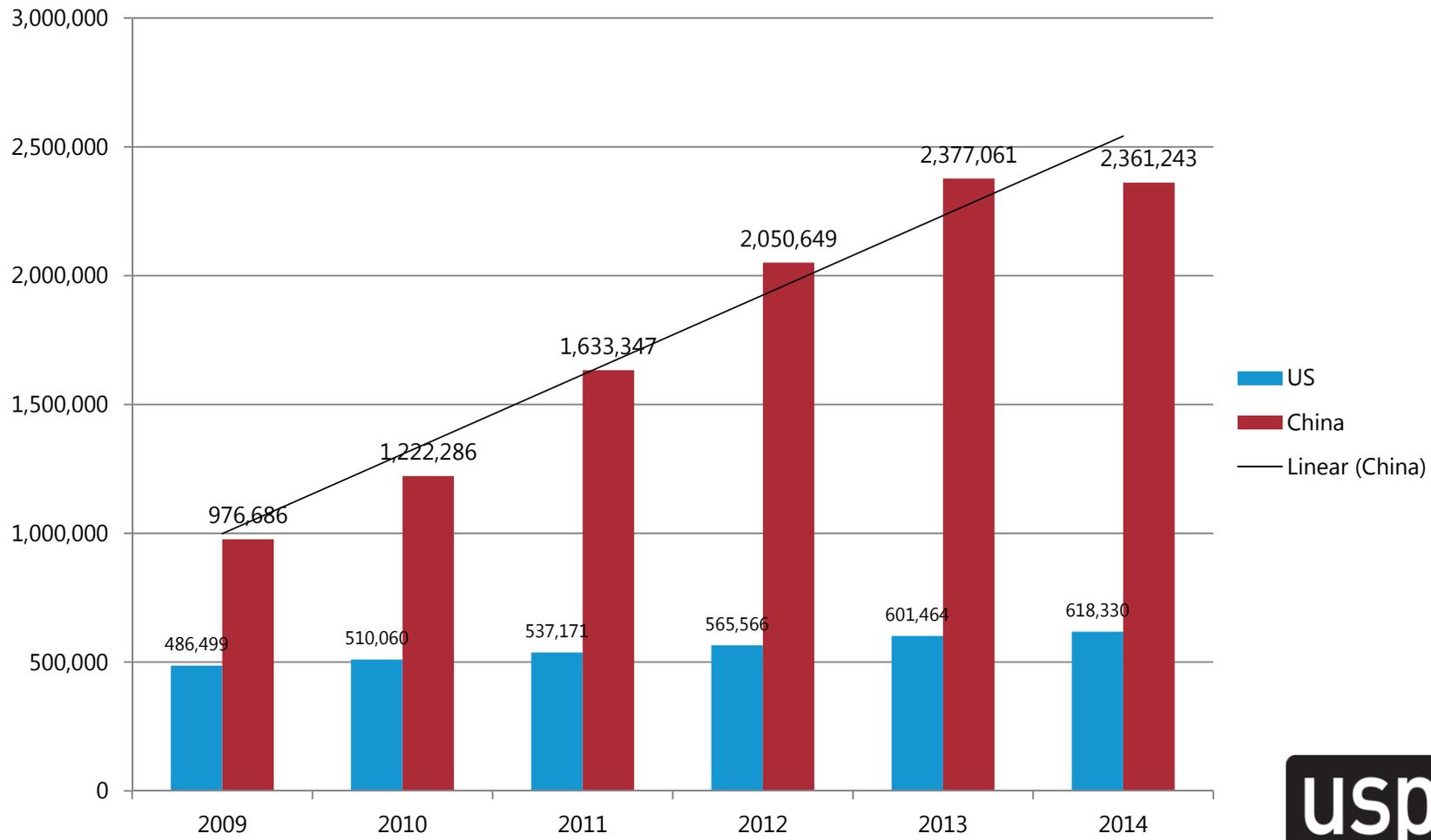
AS a national strategy, China is trying to build an economy that relies on innovation rather than imitation. Clearly, its leaders recognize that being the world's low-cost workshop for assembling the breakthrough products designed elsewhere — think iPads and a host of other high-tech goods — has its limits.

- TWITTER
- LINKEDIN
- PRINT
- REPRINTS
- SHARE

China's 2014-2020 IP Metrics

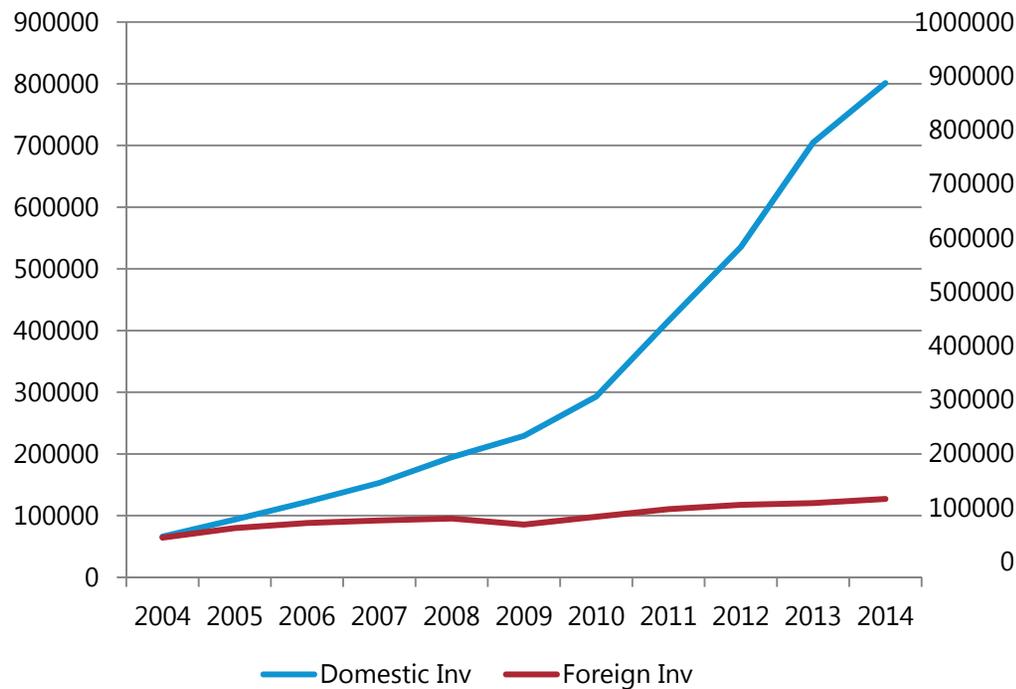
Targets	2013	2015	2020
Per 10,000 patent ownership rate	4	6	14
Patent Applications filed under PCT (10,000)	2.2	3	7.5
Domestic invention patent average maintenance duration (years)	5.8	6.4	9
Copyright Registration Volume (10,000)	84.5	90	100
Computer Software copyright registrations (10,000)	16.4	17.2	20
Total Technology based contracts (Trillion Yuan)	0.8	1	2
IP financing annual amount (100 million Yuan)	687.5	750	1800
Patent royalty revenue from foreign companies (100 million US Dollars)	13.6	20	80
IP services revenue annual growth rate (%)	18	20	20
IP protection satisfaction rate (points)	65	70	80
Average length of substantive examination of invention patent application (months)	22.3	21.7	20.2
Average length of Trademark registration review period (months)	10	9	9

China Receives 3 times more patent applications than USPTO

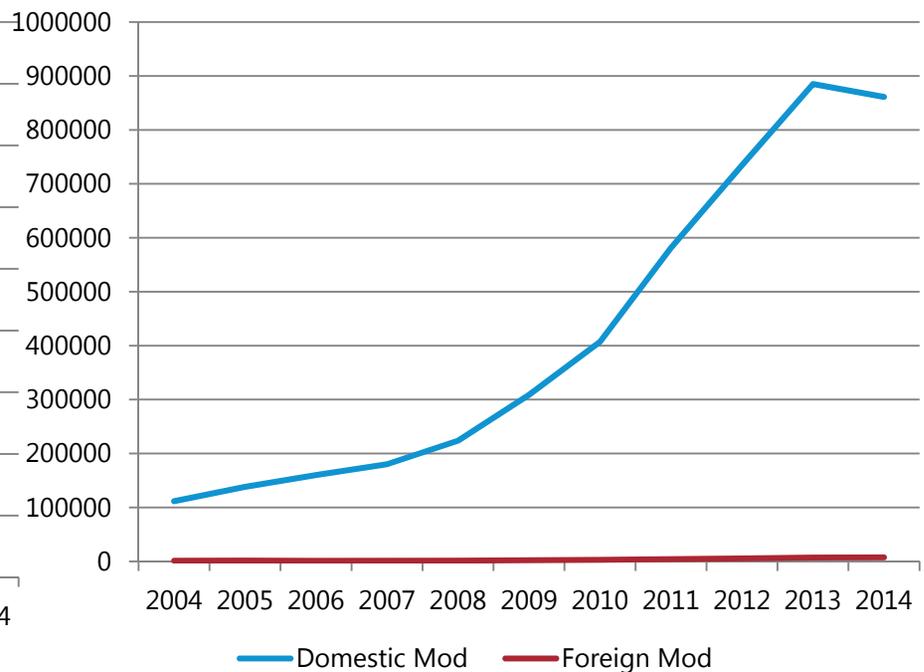


SIPO Filings: Effect of Subsidies

Invention Patent Filings



Utility Model Patent Filings



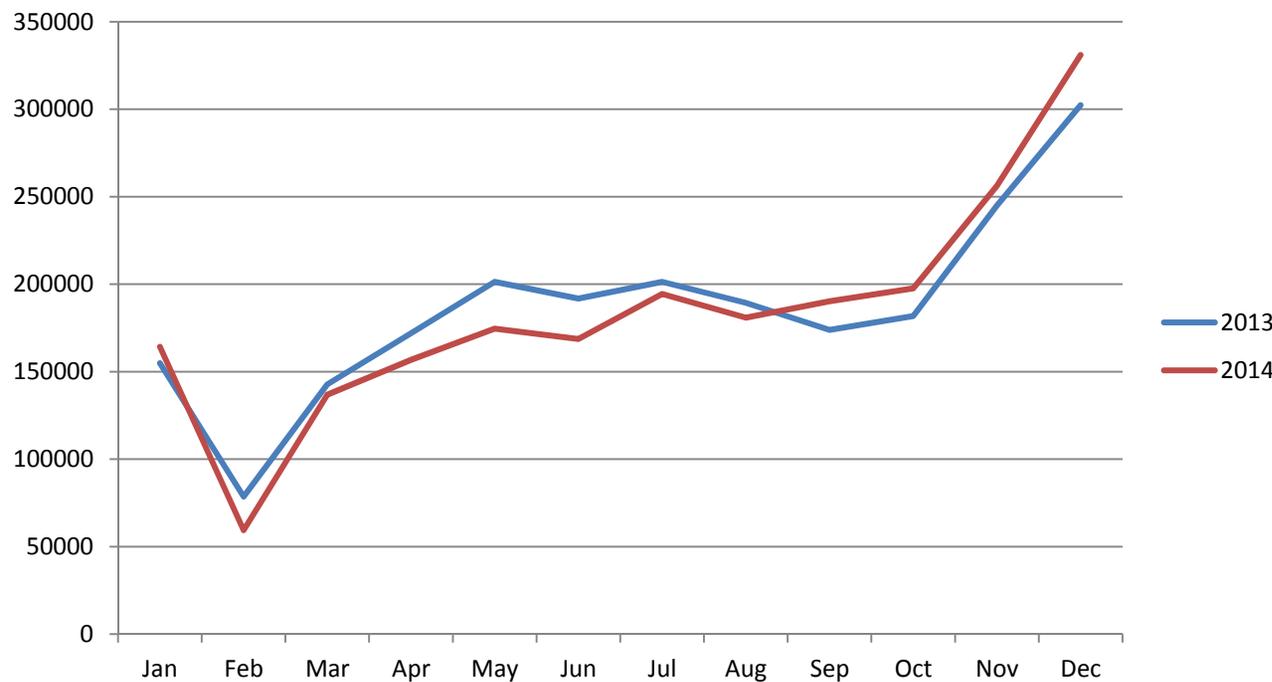
China aims to reach 14 patents per 10,000 by 2020. What State will China Statistically Resemble?

- California, U.S. State with highest per capita patent ownership rate, comes closest at 11.4 patents per 10,000 residents.



A Government Management Approach to IP?

Total Chinese Patent Application Filings by Domestic Applicants



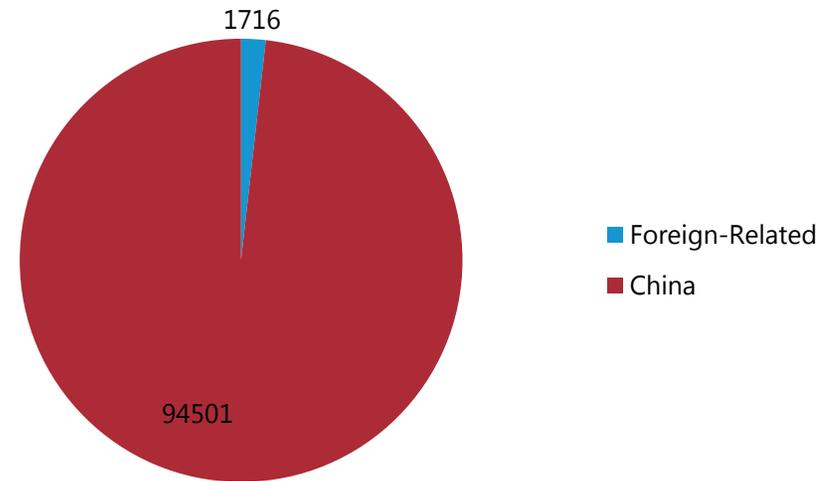
Slide 17

KXL -2nd1 Updated

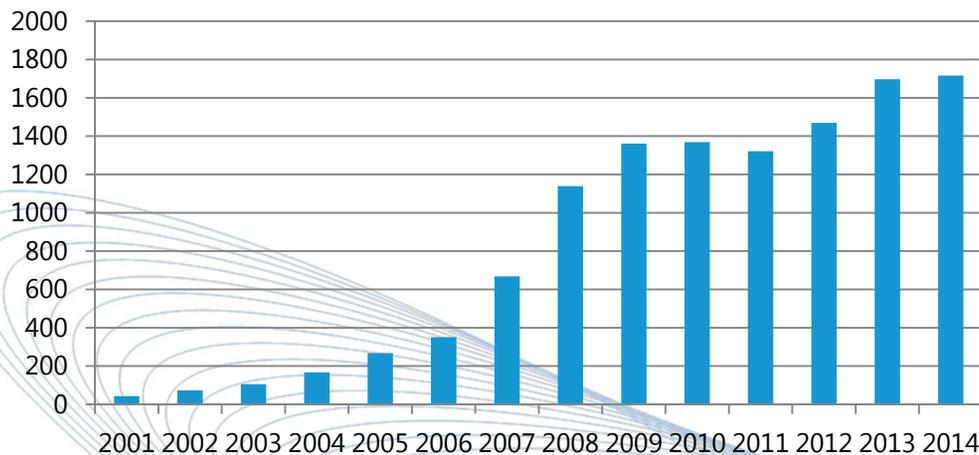
Kevin Lu - AJH Comments, 5/5/2015

Yet US Companies Do Not Fully Participate in China's IP Markets

Foreign Related Civil IPR Cases/Total IPR Cases 2014



Foreign Related IPR Civil Cases



Foreign cases were 1.8% of the 2014 docket



Slide 18

KXL -2nd13 Updated

Kevin Lu - AJH Comments, 5/5/2015

Patent Application Data – China

Patent Applications - 2013

		Invention		Utility Model		Design		Total	
		Number	%	Number	%	Number	%	Number	%
Total	Subtotal	825136	100.00%	892362	100%	657582	100%	2375080	100%
	Service	688727	83.47%	640112	71.73%	365007	55.51%	1693679	71.31%
	Non-Service	136409	16.53%	256598	28.75%	294572	44.80%	683382	28.77%
Domestic	Subtotal	704936	100/85.4	885226	100/99.2	644398	100/97.7	2234560	100/94.0
	Service	571073	81.01%	633446	71.56%	350551	54.40%	1555070	69.59%
	Non-Service	133863	18.99%	251780	28.44%	293847	45.60%	679490	30.41%
Foreign	Subtotal	120200	100/14.6	7136	100/0.8	15165	100/2.3	142501	100/6.0
	Service	117654	97.88%	6666	93.41%	14456	95.32%	138609	97.27%
	Non-Service	2546	2.12%	4818	67.52%	725	4.78%	3892	2.73%



Is this Assumption Flawed: Nationality of Ownership - the US

- **Four of Big Six Publishers
Are Foreign-Owned**
- **Four of the Five Largest Science, Technical,
Medical Publishers are Foreign-Owned**
- **Of the top ten best-selling fiction authors in the
US, five are foreign.**
- **Two of the three major record labels are foreign.**
- **In 2013, Oscar Winners in 13 of the 24
categories were foreign.**
- **In 2014, foreign residents obtained 6185
US patents than US residents.**

Total Licensing Revenues: China-U.S. Compared with Taiwan- US

	total receipts from China (\$million)	total payments to China (\$million)
2006	1,551	91
2007	1,939	114
2008	2,310	146
2009	2,194	120
2010	3,333	91
2011	4,247	163
2012	4,817	500
2013	5,780	368

	total receipts from Taiwan (\$million)	total payments to Taiwan (\$million)
2006	1,538	68
2007	942	79
2008	839	18
2009	1,989	29
2010	4,276	29
2011	5,216	43
2012	5,750	40
2013	5,259	42

In 2012, China exported **19%** of the world's high tech goods, but only **3.6%** of US total high tech licensing receipts (industrial processes and software) comes from China, suggesting a shortfall of 20 or more billion \$ per year.



Supporting Domestic Enterprises

Huawei's success in anti-monopoly lawsuit is quite meaningful. QIU Yongqing, the chief judge, believes that Huawei's strategy of using anti-monopoly laws as a countermeasure [against foreign enterprises] is worth learning by other Chinese enterprises. *QIU suggests that Chinese enterprises should bravely employ anti-monopoly lawsuits to break technology barriers and win space for development.*

本案中，华为提起反垄断诉讼的成功意义重大。审判长邱永清认为，华为公司善于运用反垄断法律武器进行反制，值得其他中国企业学习。邱永清建议**国内企业**，在突破技术壁垒为自己赢得发展空间上，要大胆运用反垄断诉讼的手段

http://rmfyb.chinacourt.org/paper/html/2013-10/29/content_72138.htm?div=-1



Another Opportunity: Role of Chinese Investment in the US

- Between 2000-2013, Chinese investments in the High-Tech Industries** has totaled over \$9 billion dollars.
- In the first three months of 2014, almost \$6 billion dollars of investments had been announced or completed***.

** Aerospace Equipment and Components; Automotive Equipment and Components; Other Transportation Equipment; Chemicals; Renewable Energy; Financial Services and Insurance; Business Services; Pharmaceuticals and Biotechnology; Plastic, Rubber, and Other Materials; Health Care and Medical Devices; Industrial Machinery and Tools; Electronics and Electronics Parts; IT Equipment; Software and IT Services; Semiconductors

*** MicroPort Scientific's purchase of Wright Medical's OrthoRecon; Lenovo's acquisition of IBM's low-end server business; Lenovo's acquisition of Motorola Mobility Assets; Shenzhen Hepalink Pharmaceutical's takeover of Scientific Protein Laboratories; and Wanxiang's acquisition of Fisker.



Resource Center - Need for Data in Policy Discussion - WTO IP Customs Case

7.232 The Panel will continue to assess the claim insofar as it concerns goods destined for importation. Imports represented 0.15 per cent by value of the goods disposed of or destroyed under the measures at issue in the years 2005 to 2007. During that period, all confiscated infringing imports were either donated to the Red Cross Society of China (0.12%) or destroyed (0.02%)²²⁴ The volume of infringing imports that was sold to the right holder, or auctioned, was zero.

		2005	2006	2007	Total
By shipment³³⁸					
Exports + imports	Auctioned	4	7	1	12
	Destroyed	143	227	248	618
By value					
Exports + imports	Auctioned	7.10%	3.54%	0.59%	3.70%
	Destroyed	92.90%	96.46%	99.41%	96.30%
Imports only	Auctioned	0%	0%	0%	0%
	Destroyed	100.00%	100.00%	100.00%	100.00%



3. Patent Related Issues of Concern to U.S. Rights Holders

- **Enforcement**
 - 2-tier system
 - New IP Courts
- **Patent Prosecution**
 - Supplementation of Data
 - Utility Model Patents

Patent for What ?

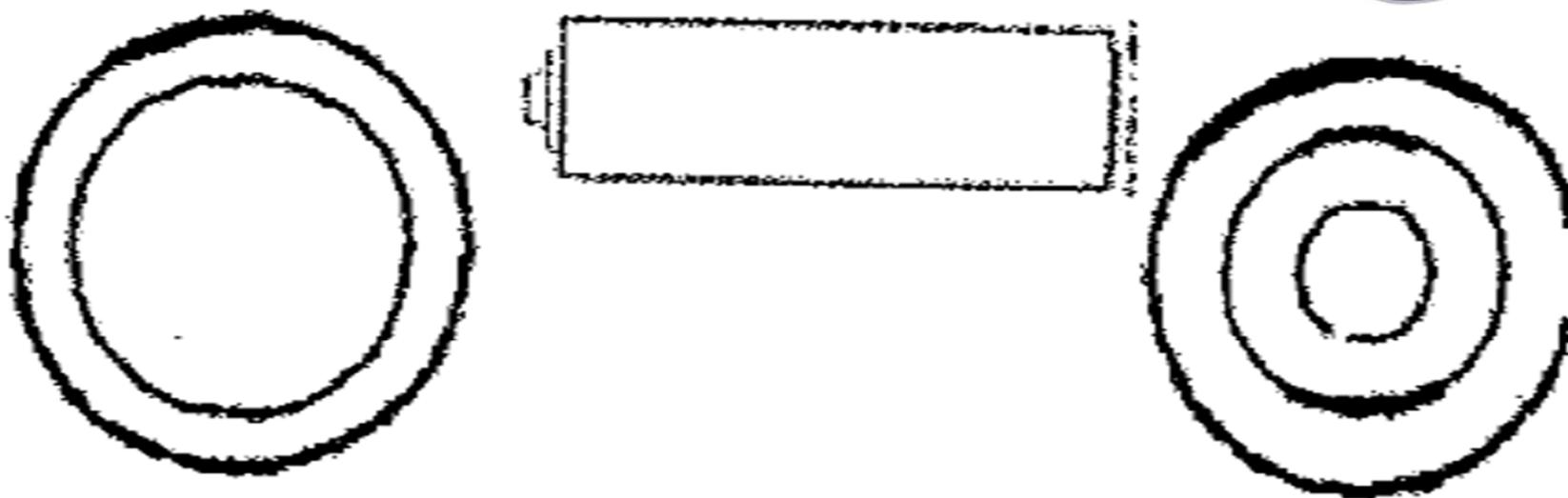


图 1 样品图一

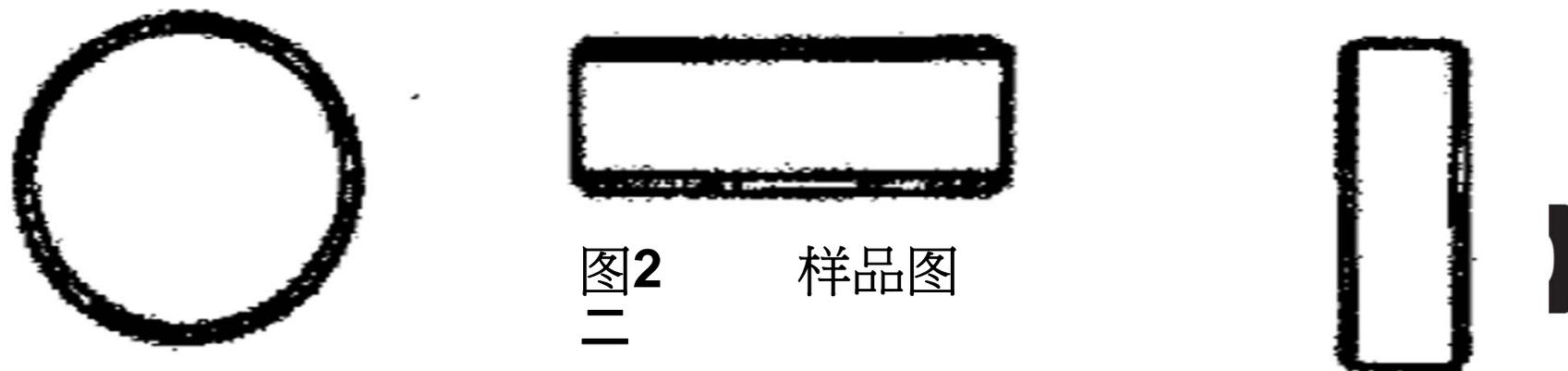


图 2 样品图
二

4. US Government Dialogues

- On-going WTO Monitoring
- Strategic and Economic Dialogue (S&ED)
 - Economic and Strategic Track
 - Meets once/year
 - S&ED “deliverables”
- Bilateral Work through the Joint Commission on Commerce and Trade (JCCT) and the JCCT IP Working Group
 - USPTO and the Office of US Trade Representative (USTR) are co-chairs
 - “Break out group” discussions on copyright, enforcement, patents, trademarks, trade secrets, IP and innovation, IP and standards
 - JCCT “deliverables” agreed to at the JCCT annual plenary meeting
- US-MOST (Ministry of Science and Technology) Innovation Dialogue

Dialogues and Other Means...



"There is no trade war between China and the United States. We have a strong and growing trade relationship," US Trade Representative Schwab said at a news conference in Washington Monday. "But it should not surprise anyone that there are frictions." China's Ministry of Commerce said the U.S. action will "severely damage trade relations and cooperation."

"China very much regrets the decision and is strongly displeased." (Apr 2007 – DS/362 and 363)

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5. USPTO Bilateral Relationship with SIPO

- **USPTO-SIPO MOU signed in May 2014 (with new work plan drafted at the beginning of each calendar year)**
 - Exchange of heads of offices on annual basis
 - Joint programs, seminars, work shops on utility model/design patents, examination of biotechnology related inventions
 - Outreach programs including “How to file” programs
 - Technical exchanges such as exchange of IT experts, quality assurance experts, etc.
 - Training of SIPO examiners
 - Exchange of databases, priority document exchange
 - Commenting on draft laws, regulations, examination guidelines
 - Looking at new and emerging cutting edge issues such as patents and standards, IP and antitrust
- **Work sharing initiatives such as the Patent Prosecution Highway (PPH)**



IP5 Cooperation



- **Five IP Offices (IP5)**
 - European Patent Office (EPO)
 - Japan Patent Office (JPO)
 - Korean Intellectual Property Office (KIPO)
 - State Intellectual Property Office of the People's Republic of China (SIPO)
 - United States Patent and Trademark Office (USPTO)



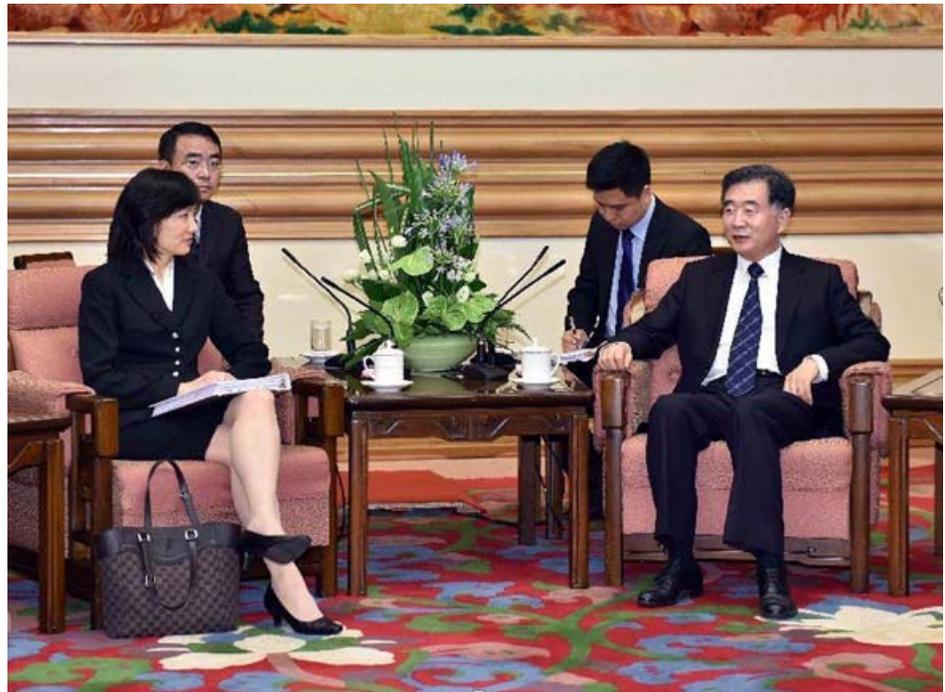
Heads of Office Meeting

Under Secretary of
Commerce for Intellectual
Property and Director of the
USPTO signs new MOU with
SIPO Commissioner Shen
Changyu



Meeting with Vice Premier Wang Yang

- Unprecedented
- Very Positive
- Likely to lead to more cooperation with PTO



USPTO China Team Upcoming Events in 2016

- Everything you wanted to know about China IP – summer at the USPTO
- IP Roadshows – April in Madison, WI, and summer at the USPTO
- USPTO-George Washington University Program (patent focused) – April 14 at the USPTO
- Other programs
 - Licensing program - George Mason University, June
 - Licensing program in Beijing
 - Entertainment law program – Los Angeles
 - Program for companies with R&D issues in Beijing, Shanghai, Guangzhou
 - Online Enforcement Taskforce activities



Thank you!

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