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

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

Mark A. Cohen, Senior Counsel
Elaine T.L. Wu, Attorney-Advisor
Office of Policy and International Affairs
U.S. Patent and Trademark Office
# Table of Contents

1. The evolution of US involvement in China’s IP regime  
2. Impact of China’s innovation policies  
3. Issues facing U.S. right holders  
4. Dialogues and other means to improve the patent protection in China for U.S. rights holders  
5. How the USPTO China team is working with China’s patent office today
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.

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

By NIEL KOFF 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. counterfeiter 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
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
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.


Application filed June 18, 1897. Renewed October 3, 1898. Serial No. 693,046. (No model.)
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

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.
# China’s 2014-2020 IP Metrics

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

### Patent Applications - 2013

<table>
<thead>
<tr>
<th></th>
<th>Invention</th>
<th></th>
<th>Utility Model</th>
<th></th>
<th>Design</th>
<th></th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
<td>Number</td>
<td>%</td>
<td>Number</td>
<td>%</td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal</td>
<td>100.00%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Service</td>
<td>688727</td>
<td>83.47%</td>
<td>640112</td>
<td>71.73%</td>
<td>365007</td>
<td>55.51%</td>
<td>1693679</td>
<td>71.31%</td>
</tr>
<tr>
<td>Non-Service</td>
<td>136409</td>
<td>16.53%</td>
<td>256598</td>
<td>28.75%</td>
<td>294572</td>
<td>44.80%</td>
<td>683382</td>
<td>28.77%</td>
</tr>
<tr>
<td><strong>Domestic</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal</td>
<td>100/85.4</td>
<td>100/99.2</td>
<td>100/97.7</td>
<td>100/94.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service</td>
<td>571073</td>
<td>81.01%</td>
<td>633446</td>
<td>71.56%</td>
<td>350551</td>
<td>54.40%</td>
<td>1555070</td>
<td>69.59%</td>
</tr>
<tr>
<td>Non-Service</td>
<td>133863</td>
<td>18.99%</td>
<td>251780</td>
<td>28.44%</td>
<td>293847</td>
<td>45.60%</td>
<td>679490</td>
<td>30.41%</td>
</tr>
<tr>
<td><strong>Foreign</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal</td>
<td>100/14.6</td>
<td>100/0.8</td>
<td>100/2.3</td>
<td>100/6.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service</td>
<td>117654</td>
<td>97.88%</td>
<td>6666</td>
<td>93.41%</td>
<td>14456</td>
<td>95.32%</td>
<td>138609</td>
<td>97.27%</td>
</tr>
<tr>
<td>Non-Service</td>
<td>2546</td>
<td>2.12%</td>
<td>4818</td>
<td>67.52%</td>
<td>725</td>
<td>4.78%</td>
<td>6293</td>
<td>2.73%</td>
</tr>
</tbody>
</table>
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 more US patents than US residents.
## Total Licensing Revenues: China-U.S. Compared with Taiwan-US

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Receipts from China ($million)</th>
<th>Total Payments to China ($million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>1,551</td>
<td>91</td>
</tr>
<tr>
<td>2007</td>
<td>1,939</td>
<td>114</td>
</tr>
<tr>
<td>2008</td>
<td>2,310</td>
<td>146</td>
</tr>
<tr>
<td>2009</td>
<td>2,194</td>
<td>120</td>
</tr>
<tr>
<td>2010</td>
<td>3,333</td>
<td>91</td>
</tr>
<tr>
<td>2011</td>
<td>4,247</td>
<td>163</td>
</tr>
<tr>
<td>2012</td>
<td>4,817</td>
<td>500</td>
</tr>
<tr>
<td>2013</td>
<td>5,780</td>
<td>368</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Receipts from Taiwan ($million)</th>
<th>Total Payments to Taiwan ($million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>1,538</td>
<td>68</td>
</tr>
<tr>
<td>2007</td>
<td>942</td>
<td>79</td>
</tr>
<tr>
<td>2008</td>
<td>839</td>
<td>18</td>
</tr>
<tr>
<td>2009</td>
<td>1,989</td>
<td>29</td>
</tr>
<tr>
<td>2010</td>
<td>4,276</td>
<td>29</td>
</tr>
<tr>
<td>2011</td>
<td>5,216</td>
<td>43</td>
</tr>
<tr>
<td>2012</td>
<td>5,750</td>
<td>40</td>
</tr>
<tr>
<td>2013</td>
<td>5,259</td>
<td>42</td>
</tr>
</tbody>
</table>

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.
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.**

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.
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%). The volume of infringing imports that was sold to the right holder, or auctioned, was zero.

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>By shipment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports + Imports</td>
<td>Auctioned</td>
<td>4</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Destroyed</td>
<td>143</td>
<td>227</td>
<td>248</td>
</tr>
<tr>
<td><strong>By value</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exports + Imports</td>
<td>Auctioned</td>
<td>7.10%</td>
<td>3.54%</td>
<td>0.59%</td>
</tr>
<tr>
<td></td>
<td>Destroyed</td>
<td>92.90%</td>
<td>96.46%</td>
<td>99.41%</td>
</tr>
<tr>
<td>Imports only</td>
<td>Auctioned</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>Destroyed</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

• Enforcement
  – 2-tier system
  – New IP Courts

• Patent Prosecution
  – Supplementation of Data
  – Utility Model Patents
Patent for What?
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**
"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)
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!

• Contact information:
  – Mark Cohen – mark.cohen@uspto.gov
  – Elaine Wu – elaine.wu@uspto.gov

Phone: (571) 272-9300