

International Companies Require China-specific Patent Strategies

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Shanghai, China – May 15, 2008: China, one of the world's largest and most promising markets, has seen a 20 percent annual increase in patent application filings over the last fifteen years. In 2007, the State Intellectual Property Office (SIPO) of China received 694,153 patent applications, an increase of 21.1 percent over the previous year. These applications included filings for all three types of patents granted in China: Invention patents (valid for 20 years from the date of filing), Utility Models (valid for 10 years), and Design patents (also valid for 10 years). With regard to invention patents (20 year patents), China is currently third in the world behind the United States and Japan. In its latest study, Evalueserve, a global research and analytics firm, forecasts that if patent filings in China continue to grow at the current rate, the SIPO will overtake the USPTO (United States Patent and Trademark Office) by 2012.

Although China is still struggling with the image of being a safe haven for intellectual property counterfeiters and thieves, during the last two decades it has developed its patent system significantly, and incorporated an online and searchable patent database, a robust appeal mechanism, and a hierarchy of courts for handling intellectual property disputes. As a result, more than four million patent applications were filed from early 1985 to December 2007. The first million applications were filed over 15 years, but the last million took only 18 months. These measures also resulted in a substantial increase in lawsuits related to patent infringement. For example, in 2005, 2,947 patent-related cases were filed in Chinese courts, representing an increase of 15.6 percent from 2004. In contrast, the number of patent-related lawsuits in the United States decreased from 2,973 in 2004 to 2,812 in 2006. The difference in the number of legal cases related to all forms of intellectual property (e.g., patents, trademarks, copyright, and trade secrets) is even more significant: in 2005, 13,424 cases were filed in China, whereas only 10,905 were filed in the United States.

Patent-related lawsuits involving international companies such as Pfizer, Honda, Philips, and 3M have increased by 77.5 percent over the past year. The number of closed cases in which at least one of the parties was a non-Chinese company reached 268 in 2005. But contrary to popular belief, the playing field within the intellectual property system in China seems to have become more level. According to the No. 1 Intermediate People's Court of Beijing, foreign parties won 60 percent of these cases. Hence, it is now more important than ever for international companies to develop their China-specific patent strategies. By not doing so, they may become targets for patent infringement, as Schneider Electric (France) was by The Chint Group (China). In this case, The Chint Group alleged that Schneider Electric infringed on one of its 10-year patents. The Wenzhou Intermediate People's court ruled in favor of The Chint Group and awarded damages worth CNY 330 million (approximately USD 45 million). Schneider Electric has since appealed to a higher court, but regardless of the outcome, it would have accrued considerable expense and trouble that could have been probably avoided had it invalidated this 10-year patent before The Chint Group filed its lawsuit. Research conducted by Evalueserve also indicates that 99 percent of all utility model patents (10-year patents) are filed by domestic Chinese companies. Since these 10-year patents do not undergo substantive examination, Chinese companies use them to their advantage, whereas international companies largely neglect them. In its study, Evalueserve suggests that even if international companies operating in China do not file 10-year patents, they should at least obtain help from local patent professionals and regularly review all such granted patents in their domain, and even work proactively to invalidate some of them. Finally, these international companies need to realize that simply importing their intellectual property strategies from their home countries may not be effective and that new China-specific strategies may be required to deal with the ground realities in China.

Disclaimer

EVS Contact

Sandra Winkler

Tel: + 86 21 6440 3360 (ext: 640)

Sandra.winkler@evalueserve.com

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Evalueserve

Cyber Park

Tower A 2nd Floor, Tower B 3rd & 4th Floor, UnitechWorld-Cyber Park Jharsa, Sector-39,

Gurgaon- 122002 Haryana,India

+ 91 124 415 4000 (Tel)

+ 91 124 406 3430 (Fax)

info@evalueserve.com

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