

News update

Marsh is involved in the placement of intellectual property (IP) insurance policies for clients around the world. These policies cover multiple exposures, from IP defence through to revenue protection resulting from patent invalidation.

We are pleased to provide below an update on some recent events and enquiries involving IP coverage and the work that Marsh is doing in this area.

Newsflash

Copyright infringement is increasingly in the news and there are rising concerns regarding the 'third-party support market' (ie: technology companies that provide technical support for other companies' software).

One example of this is German company SAP, one of the largest software company's in the world, which was recently condemned by a US Jury to pay USD1.3 billion to the US company Oracle on grounds of copyright infringement by one of its subsidiaries.

Cooperation between Marsh and Mercer

Marsh and our sister company Mercer are working together through the use of alternative finance schemes for UK defined benefit pension plans to help employers and trustees address pension deficits in the downturn.

Intangible assets, such as IP and brand royalties, etc. can be used to help reduce funding deficits in an employer-friendly manner. The arrangement can be ring-fenced with IP insurance to increase trustee comfort.

Key benefits to corporates include the ability to address pension deficits up front even though the cash flow commitments are spread over an extended period; accelerate tax relief; potential to create new value on the balance sheet; to trustees it is the immediate elimination of the deficit.

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Guest Article

Ignore At Your Own Peril: Intellectual Property (IP) Strategies for China

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It is well known that China's economy has enjoyed explosive growth over the last decade and is poised to become the second largest economy in the world this year. Less known, however, is that patent filings in China have experienced even more explosive growth during the same period. As illustrated in Figure 1 (on page 3), the total number of patent applications filed in China was around 252,000 in 2002. It exceeded 947,000 in 2009, a 2.8 fold increase over a seven-year period, making the Chinese Patent Office the third busiest patent office in the world (after the Japanese Patent Office and the U.S. Patent and Trademark Office). In about two to three years, the Chinese Patent Office will be the busiest one in the world. More impressive is the total number of intellectual property suits filed in Chinese courts grew 4.6 times from 2001 to 2008 (shown in Figure 2). In 2008, China surpassed the United States to become the most litigious country in the world for IP disputes. One cannot help but wonder: why were so many patent applications and IP suits filed in China if China does not protect IP (as some assume)?

China historically has been viewed by many as a country lacking a strong intellectual property protection system. Some multinational companies made the assumption that China did not protect IP and ignored the procurement of intellectual property in China. Others continue to operate under such assumptions and have not developed an effective IP strategy for China in response to the changing tides there.

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On September 26, 2007, China saw the largest patent infringement damages award in its history: the Wenzhou Intermediate People's Court in Zhejiang Province ordered a French company, Schneider Electric (China) Investment Co., Ltd, to pay around \$48.5 million to Chint Group, a Chinese company based in Wenzhou, for infringing its Chinese patent directed to a low voltage circuit breaker. The suit was subsequently appealed but settled for around \$24 million in April 2009. On December 19, 2008, the Hangzhou Intermediate People's Court handed down a patent infringement damages award of \$7.4 million to Zhejiang-based Holley Communications for infringing its patent covering dual-mode GSM/CDMA phones.

Not all foreign companies have lost IP infringement suits in China. Neoplan GmbH, a German bus company, successfully obtained a patent infringement damages award of \$3 million in the Beijing First Intermediate People's Court against two Chinese companies for their infringement of its design patent on buses. This case represents the largest infringement damages award ever obtained by a foreign company in China. This is rather significant, considering that the average patent infringement damages award in China is less than \$50,000.

Cynics and skeptics may point to Schneider's and Samsung's loss as evidence of local protectionism in China. They also may point out that less than five percent of the 24,406 IP suits filed in 2008 involved foreign parties and argue that such low numbers prove that foreign parties do not have confidence in the Chinese judicial system. It is true that many multinational companies are reluctant to enforce their IP in China due to the perceived lack of impartiality. The courageous ones, however, have fared relatively well in Chinese courts. Anecdotal evidence suggests that the recent win rate for multinational companies in IP suits in China has been greater than 50 percent. In some cities, the win rate exceeds 90 percent. While it may be premature to declare victory based on these statistics, they do suggest that it is a mistake to assume that multinational companies cannot win IP suits in China.

Over the last decade, China has taken significant steps to create an IP protection environment which encourages innovation. In fact, IP has become such an important issue for China's transition to an innovation based economy that the State Council of China issued *Outline of the National Intellectual Property Strategy* in June 2008. In promulgating the national IP strategy, China seeks to transform itself into a country with a relatively higher level of intellectual property rights creation, utilization, protection and administration by 2020. On November 11, 2010, the Chinese Patent

Office released the "National Patent Business Development Strategy (2011-2020)," which maintains and intensifies the principles detailed in the "*Outline of National Intellectual Property Strategy*". According to the development strategy plan, the Chinese government will provide greater support for the export of patented products and make full use of the country's tax and financial policies to boost creations and commercialization of core patents. The country also aspires to have a group of core patents for newly emerging industries and key technology in traditional industries within the next ten years, with patent applications from large-scale industrial companies accounting for 10 percent of the total.

Cynics and skeptics might say that China's national IP strategy is merely political window dressing and intends to benefit domestic Chinese companies only. Even if there is an element of favoritism towards domestic companies in the national IP strategy, China now has an internal driver for building a robust IP protection system: to benefit domestic innovative companies. In 2009, about 90 percent of the patent applications filed with the Chinese Patent Office were from domestic applicants. According to statistics published by the World Intellectual Property Organization, Huawei Technologies Co. Ltd., a Shenzhen-based telecoms company, filed the most PCT applications in 2008, beating Panasonic, Phillips, Toyota and other multinational companies that used to hold the top spot. Chinese innovative companies such as Huawei, are beginning to effect positive changes in IP protection in China.

In general, IP has a relatively long life: a patent has a life of 20 years; a copyright at least 50 years. Trademarks and trade secrets can last indefinitely if properly protected. Over the last 20 years, China has risen from obscurity to prominence in the intellectual property arena. Based on the past trajectory, it is not hard to imagine that IP will play a central role in China over the next 20 years. In light of the evolving IP landscape in China, one wonders how many multinational companies have a winning strategy for the coming decade.

A new IP protection paradigm is emerging in China. Multinational companies should operate under the assumption that China protects IP and aggressively build an IP portfolio there. Moreover, they should implement effective and comprehensive IP strategies in China, including IP enforcement and value extraction. They also should examine their IP holding strategies in light of China's emergence on the IP front. The interface of Chinese IP laws and anti-monopoly law also calls for a brand new strategy. It is not too late to remedy the lack of an IP strategy for China. Woe unto those who continue to ignore it.

Supporting graphs:

Figure 1

Number of Patent Applications Filed in China

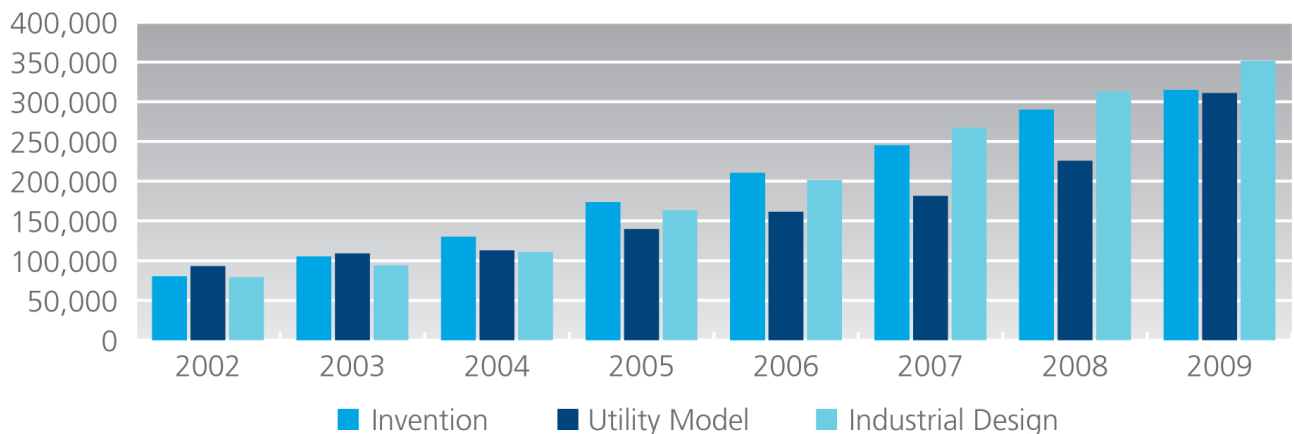
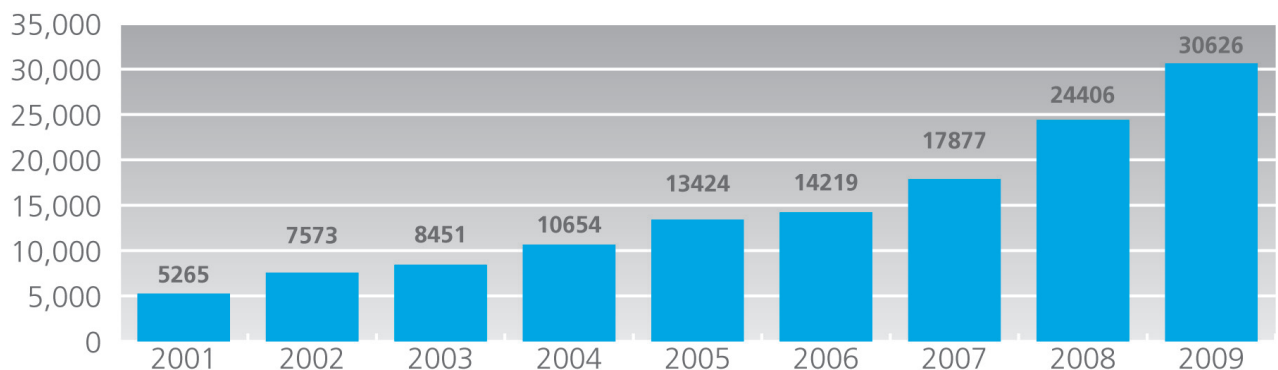


Figure 2

Number of IP Infringement Suits Filed in China



If you would like further information on our work in this area, please contact your usual Marsh advisers, or any of our specialists below:

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