



Unique Aspects of IP Due Diligence Practice in China

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- I. Current Developments in China
- II. Issues for IP Due Diligence in China
- III. Case Study

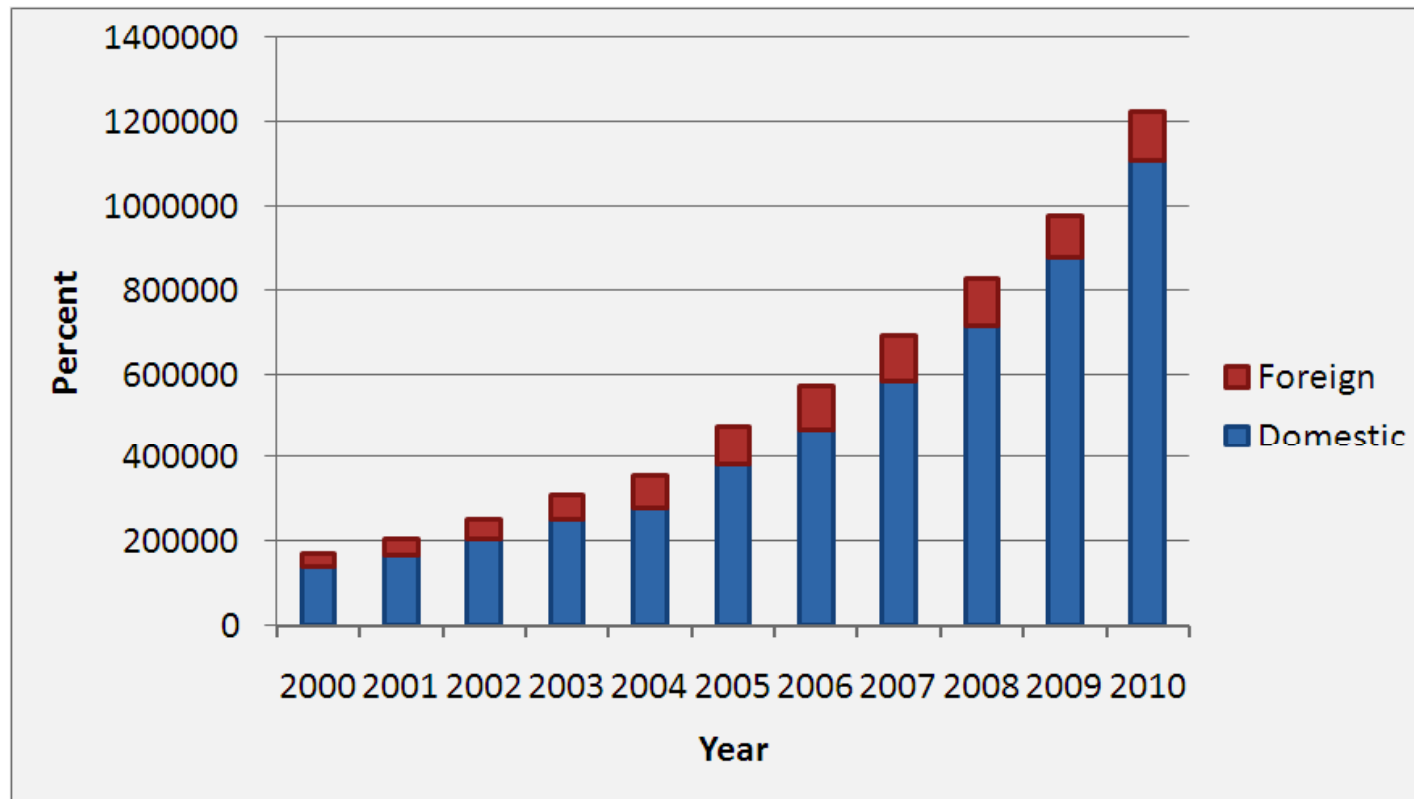
I. Current Developments in China

Patent Applications Received by SIPO

Year	Foreign Companies	Foreign Growth Rate	Domestic Companies	Domestic Growth Rate
2000	30,343	25.03%	140,339	27.62%
2001	37,800	24.58%	165,773	18.12%
2002	47,087	24.57%	205,544	23.99%
2003	57,249	21.58%	251,238	22.23%
2004	74,864	30.77%	278,943	11.03%
2005	93,107	24.37%	383,157	37.36%
2006	102,836	10.45%	470,342	22.75%
2007	107,419	4.46%	586,734	24.75%
2008	111,184	3.50%	717,144	22.23%
2009	99,075	-10.89%	877,611	22.38%
2010	112,858	13.91%	1,109,428	26.41%

* Source: SIPO

Patent Applications Received by SIPO



* Source: SIPO

Patent Applications Received by SIPO

“By the end of the 12th Five Year Plan (2011-2015), invention applications received by SIPO every year are expected to double over the current number. More companies will have their own patents and [intellectual property rights].”

-Tian Lipu, SIPO Commissioner

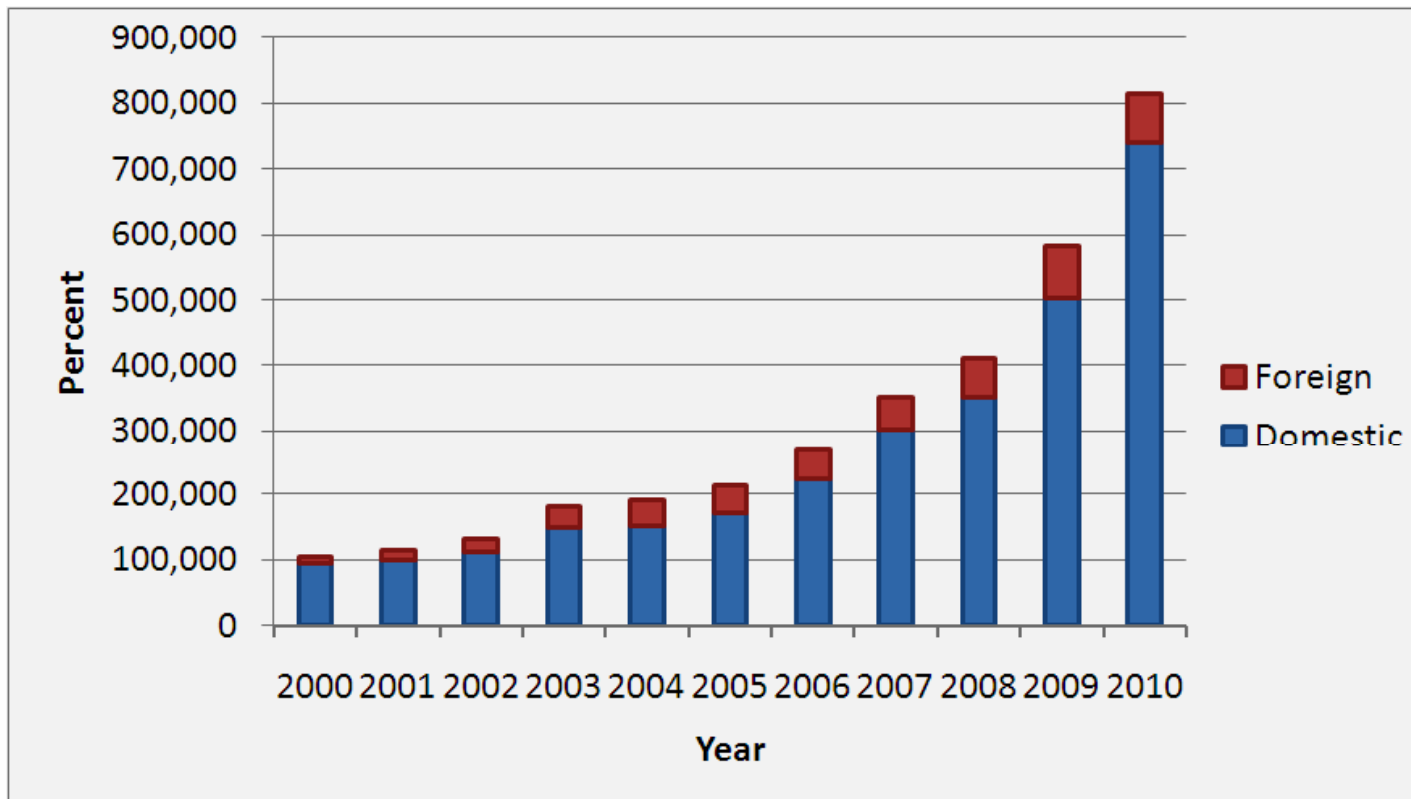
Patents Granted by SIPO

Year	Foreign Companies	Foreign Growth Rate	Domestic Companies	Domestic Growth Rate
2000	10,109	25.67%	95,236	3.39%
2001	14,973	48.12%	99,278	4.24%
2002	20,296	35.55%	112,103	12.92%
2003	32,638	6.08%	149,588	33.44%
2004	38,910	19.22%	151,328	1.16%
2005	42,384	8.93%	171,619	13.41%
2006	44,142	4.15%	223,860	30.44%
2007	50,150	13.61%	301,632	34.74%
2008	59,576	18.80%	352,406	16.83%
2009	80,206	34.63%	501,786	42.39%
2010	74,199	-7.49%	740,606	47.59%

* Source: SIPO

8

Patents Granted by SIPO



* Source: SIPO

Patent Filings under PCT in 2010

Rank	Country	Number of Patents
1	United States	44,855
2	Japan	32,156
3	Germany	17,171
4	China	12,339

* Source: WIPO

- U.S. filings decreased 1.7% from 2009, declining for 3rd consecutive year
- China filings increased 56.2% from 2009, making it 1st in growth rate
- Thomson Reuters study predicts China will be ranked 1st for 2011

VC Investment in China in Life Science

Year	VC Investment	Average Investment
2007	\$409 M	\$10 M
2008	\$327 M	\$12 M
2009	\$318 M	\$11 M
2010	\$1,013 M	\$21 M

* Source: ChinaBio Consulting

IPOs in China in Life Science

Year	IPOs	Average IPO Value
2007	\$2,707 M	N/A
2008	\$168 M	\$28 M
2009	\$3,995 M	\$266 M
2010	\$5,855 M	\$177 M

* Source: ChinaBio Consulting

M&As in China in Life Science

Year	M&As	Average M&A Value
2007	\$1,226 M	N/A
2008	\$1,779 M	\$54 M
2009	\$440 M	\$23 M
2010	\$3,405 M	\$70 M

* Source: ChinaBio Consulting

II. Issues for IP Due Diligence in China

Issues for IP Due Diligence in China

- For patents and potential product of interest, consider issues of Inventorship/Ownership
 - Company's business structure
 - Collaboration with universities and research institutes
 - Employment contracts
 - Non-compete agreement
 - Rewards and remunerations for service inventions
 - Patents vs. trade secret protection
 - Ownership on improvement

Issues for IP Due Diligence in China

- For patents that cover the potential product of interest, consider validity, scope of protection, and enforceability:
 - Determine the scope of the claims
 - Claim construction
 - Does any claim cover the product?
 - Validity over art previously cited and newly identified in searches
 - Secrecy examination requirements for inventions made in China: effective October 1, 2009

Issues for IP Due Diligence in China

- For the potential product of interest
 - Consider Freedom to Operate (FTO)

III. Case Study

- ***Wuhan Jingyuan vs. Japanese Fujikashui and Huayang***
(the People's Supreme Court, December 21, 2009)
 - Jointly liable for monetary damages of RMB 50.6 Millions (i.e., approximately US\$7.76 millions)
 - No injunctive relief because of public interests
- Nature of the case: patent infringement
 - Patent: ZL95119389.9, entitled “Sea Water Aeration Technology for Removing Sulfur from Smoke and Aeration Device”
 - Filed December 12, 1995; issued September 25, 1999

■ Facts

- Huayang received approval from Chinese government to build a power plant with certain environment requirements
- Huayang signed a contract with Jingyuan to prepare an operability research report on aeration technology for removing sulfur from smoke
- Huayang signed a technology transfer agreement with Japanese Fujikashui to purchase the sea water aeration technology for removing sulfur from smoke
 - Indemnification clause
- Jingyuan approved the research report prepared by Huayang, in which it includes figures of Japanese Fujikashui's technology

▪ Litigation

– Infringement proceedings

- Wuhan Jingyuan sued Huayang and Japanese Fujikashui in the People's High Court in Fujian
- The People's High Court in Fujian decided patent infringement

– Invalidity proceedings

- Japanese Fujikashui filed the request with the SIPO Patent Reexamination Board – patent is valid
- Appealed to Beijing No. 1 People's Intermediate Court
- Appealed to Beijing People's High Court

- **Litigation**

- Appealed to the People's Supreme Court
- Legal Issues
 - Infringement?
 - Jointly liable?
 - Injunctive relief vs. licensing royalties

Thank you!



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