



Latest Developments of Chinese Patent Law System

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Index

1. Statistics of Chinese patent filings
2. Statistics of Chinese patent litigation in Beijing IP Court
3. New changes of Chinese patent system
4. Recent cases

1. Statistics of Chinese patent filings

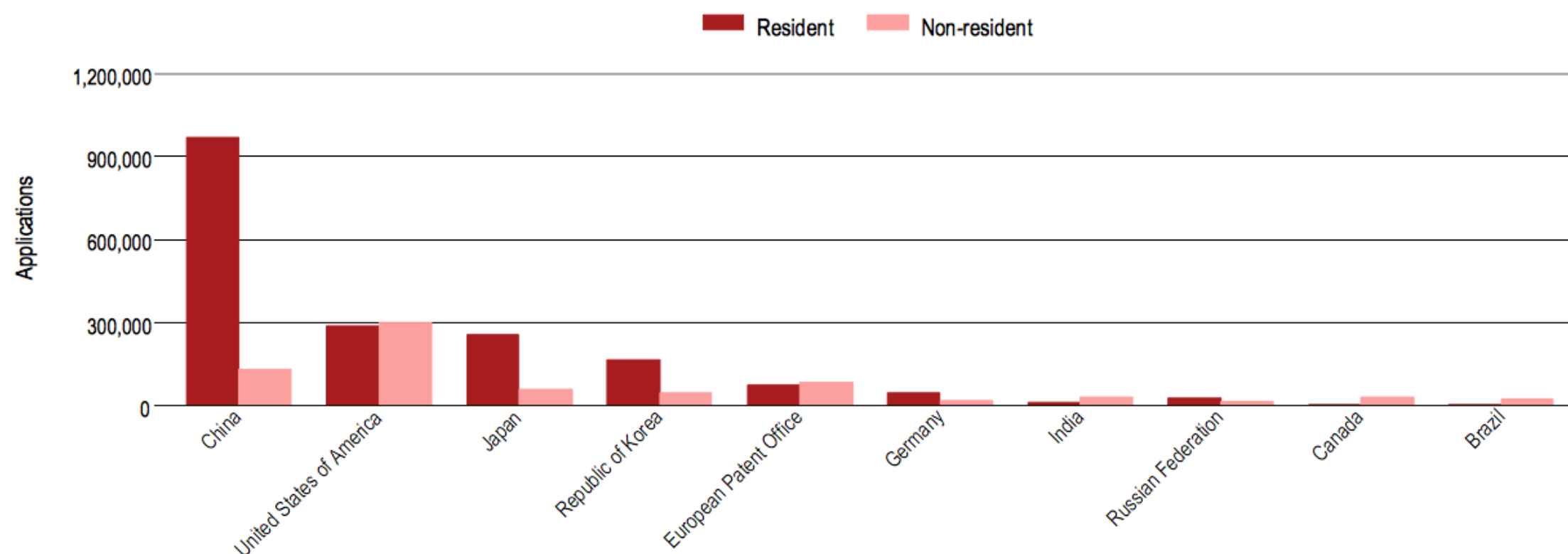
Statistics of Chinese patent filings

1. According to WIPO data*, **China ranks the worldwide number one IP filer in 2015**, including invention patents (1,101,864), utility model patents (1,127,577), industrial designs (569,059), and trademarks (2,828,287);
2. The State Intellectual Property Office of the People's Republic of China ("SIPO") received the most applications in 2015 (1,101,864 filings) and became the **first office to receive more than a million applications in a single year.**

* WIPO World Intellectual Property Indicators 2016

Statistics of Chinese patent filings

Figure 2. Patent applications at the top 10 offices, 2015



Source: WIPO World Intellectual Property Indicators 2016

Statistics of Chinese patent filings

3. SIPO granted 126,088 more patents in 2015 than in 2014, and overtook the USPTO **to become the largest office in terms of patents granted** (SIPO granted 359,316 patents in 2015, compared to 298,407 by the USPTO)

4. It is worth noticing that around 96% of total applications from China are filed in China (domestic filings) and only 4% of the total are filed abroad (foreign filings).

* WIPO World Intellectual Property Indicators 2016

2. Statistics of Chinese patent litigation in Beijing IP Court

Recent Statistics of Chinese patent litigation

- » Administrative review cases – Beijing IP court in 2015
 - » In 2015, Beijing IP court handled 3394 administrative review cases (i.e. judicial review over administrative decision, e.g, rejection of applications)
 - » Among the 3394 cases, patent cases takes up 310 cases (9.31%)

- » Civil cases – Beijing IP court in 2015
 - » In 2015, Beijing IP court handled 1573 civil cases, where the “technical cases” takes up 83.02%, including 266 patent cases, 4 plant variety cases, 9 trade secret cases and 34 software copyright cases, etc.
 - » Among the 1573 civil cases, 94 cases reached the final decision, where the plaintiffs won 68 cases, that the plaintiff’s winning rate is 72.34% (plaintiff friendly)

Data from: <http://www.iphouse.cn>

Recent Statistics of Chinese patent litigation

- » Among the above 94 civil cases reached final decision, there are 83 “technical cases”, that the plaintiff’s winning rate is 69.88% (slightly lower than the average winning rate)
- » Foreign parties involved cases – Beijing IP court in 2015
 - » In 2015, among all sampled cases handled by Beijing IP court, there are 1095 foreign parties involved cases (21.80%),
 - » 381 cases are US company involved (34.97% out of the 1095 cases)
 - » Among the 381 US company involved cases, there are 332 administrative review cases, and 49 civil cases.

Data from: <http://www.iphouse.cn>

3. New changes of Chinese patent system

New changes of Chinese patent system

- a. Establishing IP courts
- b. 4th Amendment to the Chinese patent law is still pending

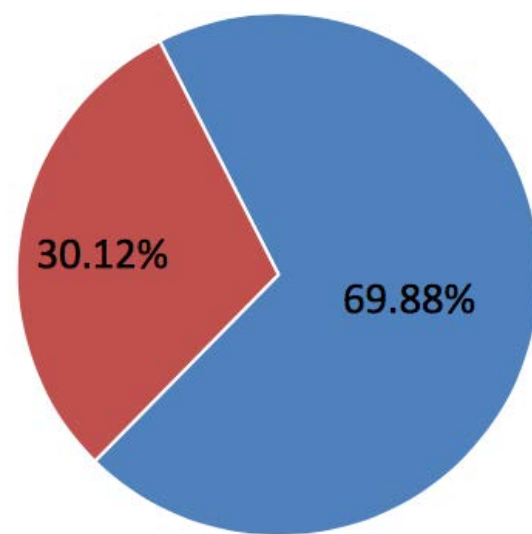
a. Establishing IP courts

- » Specialized IP courts have been established in Beijing, Shanghai, Guangzhou in 2014
 - » Beijing IP Court: since Nov. 6, 2014
 - » Shanghai IP Court: since Dec. 28, 2014
 - » Guangzhou IP Court: since Dec. 16, 2014



a. Establishing IP courts

- » Judges in the Beijing IP court were selected from the IP tribunals of the courts in Beijing, that they are highly experienced in handling patent cases
- » Beijing IP court has exclusive jurisdiction over patent infringement cases in Beijing
- » Decisions from Beijing IP court can be appealed to the Beijing High People's Court
- » Beijing IP court is tech savvy and plaintiff friendly



Blue color: “Technical cases” plaintiff first instance winning rate
(technical cases including patent, software copyright, trade secret, plant varieties)

b. 4th Amendment to the Chinese patent law - proposed changes (highlights)

- » Limited discovery tool
 - Once the courts find infringement, if plaintiff has exhausted venues of securing evidence, and the main proof of infringement (e.g. account books) is in control of the defendant, the courts may request the defendant to provide such proof. Upon failure to do so, the courts may determine damages according to plaintiff's claims.

b. 4th Amendment to the Chinese patent law - proposed changes (highlights) Cont.

- » IP ownership of "work made for hire"
 - If an invention is created by the usage of material and technical conditions of the employer, without intellectual property ownership agreement in place, the invention shall belong to the inventors
- » PRB scope of review on rejections
 - Allows the PRB to look beyond the grounds of rejection when deciding whether the patent application conforms to the relevant laws

b. 4th Amendment to the Chinese patent law - proposed changes (highlights)

Cont.

- » Punitive damages for willful infringement
 - Empowers the people's court to award punitive damages up to two to three times of the calculated remedy

- » Automatic SEP license upon failure to disclose
 - Requires any national standard-making participant the duty to disclose their own standard essential patents (SEP). Upon failure to do so, automatic license of those SEPs will be granted to any third party

b. 4th Amendment to the Chinese patent law - proposed changes (highlights)

Cont.

- » Enhance administrative power;
 - Authorizes the patent administrative departments to “confiscate or destroy the patented products as well as the components, tools, molds, devices, and other tools being used to produce patented products or to implement patented methods”

- » Patent administrative authority
 - Extend patent administrative authority a step down to “all county level”

Takeaways of the proposed 4th Amendment of Chinese Patent Law

- » Provides limited discovery tool;
- » Employee-inventor obtains IP ownership in absence of an agreement;
- » PRB can look beyond the scope of rejections;
- » Punitive damages to deter willful infringement;
- » Imposes duty to disclose to National Standard-Making participants (SEP);
- » Overuse or abuse administrative power is a major concern

4. Recent Cases

Recent cases

- a. Shenzhen Baili marketing vs. Apple, Inc.
- b. Huawei Technologies, Co, Ltd et al v. Samsung Electronics Co, Ltd. et al
- c. Samsung Electronics Co, Ltd. et al v. Huawei Technologies, Co, Ltd et al

a. Shenzhen Baili Marketing Services Co. v. Apple Inc.

- » Early 2016, Shenzhen Baili Marketing Services Co. (“Baili”) sought administrative order from SIPO Beijing local office against Apple, Inc. (Apple) for patent infringement;
- » Baili claimed that iPhone 6 and 6 Plus infringe their design patents that are used on Baili smartphone model 100c (Patent No. ZL201430009113.9);



a. Shenzhen Baili Marketing Services Co. v. Apple Inc.

- » SIPO Beijing local office ruled, “The iPhone 6 and iPhone 6 Plus infringe on Baili’s design patent due to substantial similarities to Baili’s 100c Phone, that average customers cannot identify the differences. The administrative order ruled in favor of Baili with an administrative injunction to halt sales of both iPhone 6 and 6 Plus in Beijing;
- » Apple appealed the administrative order to Beijing IP Court, as a result the order has been stayed during the process of judicial review;
- » The Beijing IP Court judicial review is now pending;
- » If Apple lost the case (Apple v. SIPO Beijing local office), Apple may have to stop selling iPhone 6 and 6 plus throughout China mainland.

b. Huawei Technologies, Co, Ltd et al v. Samsung Electronics Co, Ltd. et al

- » In May 2016, Huawei (Chinese networking and telecommunications giant) filed lawsuits against Samsung in both Shenzhen Intermediate People's Court in China, and in the U.S District Court for the Northern District of California;
- » The alleged technologies cover LTE core network technology, physical layer and layer signaling. Huawei alleges that Samsung has used this technology on Samsung flagship products, i.e. Galaxy S II handset, released five years ago;
- » Huawei did not seek injunctions in the US court to halt the sales of Samsung products;

b. Huawei Technologies, Co, Ltd et al v. Samsung Electronics Co, Ltd. et al, Cont.

- » Samsung attempts to invalidate Huawei's 11 patents;
- » In November 29, 2016, U.S. District Judge William Orrick of San Francisco rejected Samsung's attempt to invalidate two of the 11 patents asserted by Huawei for claiming ineligible subject matter;
- » The case is still pending in both jurisdictions.

c. Samsung Electronics Co, Ltd. et al v. Huawei Technologies, Co, Ltd et al

- » In July 2016, Samsung filed lawsuits against Huawei in Beijing IP court for patent infringement, claiming CNY 161 millions (USD 24 millions damages)
- » The alleged technologies cover areas of mobile telecommunication system, image data processing and digital camera, which involve many Huawei products, such as Huawei phones (e.g. Mate 8) and Huawei tablets
- » This lawsuit is considered as Samsung's revenge on Huawei's on-going lawsuits against Samsung
- » This case is pending in Beijing IP court.



THANK YOU!

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