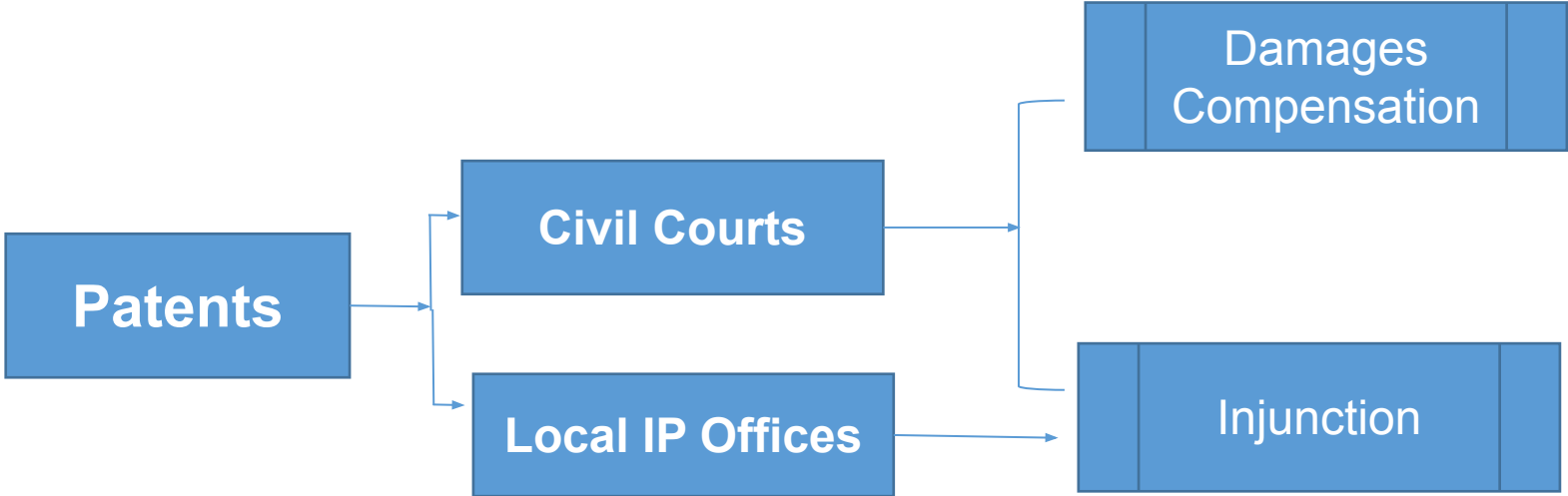

IP INNOVATION PROTECTION PATH

King&Wood Mallesons, Beijing Office, PRC
Xiaoxia(Sarah) Zhang, December, 2023



PATENT-REMEDIES

Remedies available



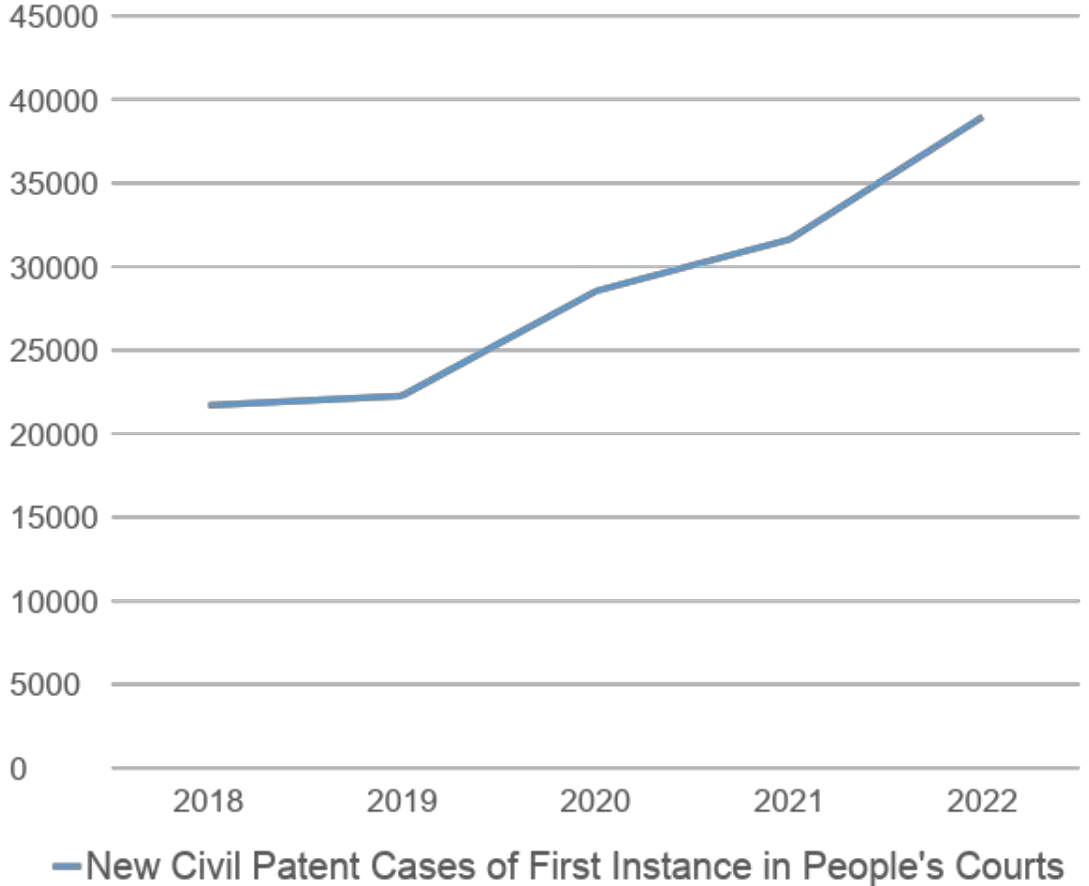
- | | |
|-------------------------------|---|
| Commonly used Defenses | <ul style="list-style-type: none">• Invalid Patent• Non-infringement |
|-------------------------------|---|



PATENT- CIVIL PROCEEDINGS

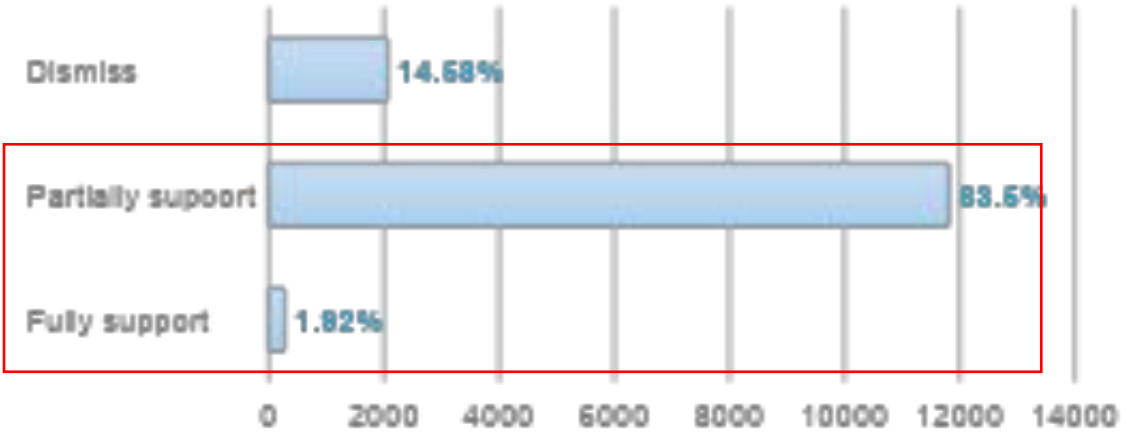
Patent Infringement Cases

Source: Reports rendered by Chinese Courts in 2018-2022

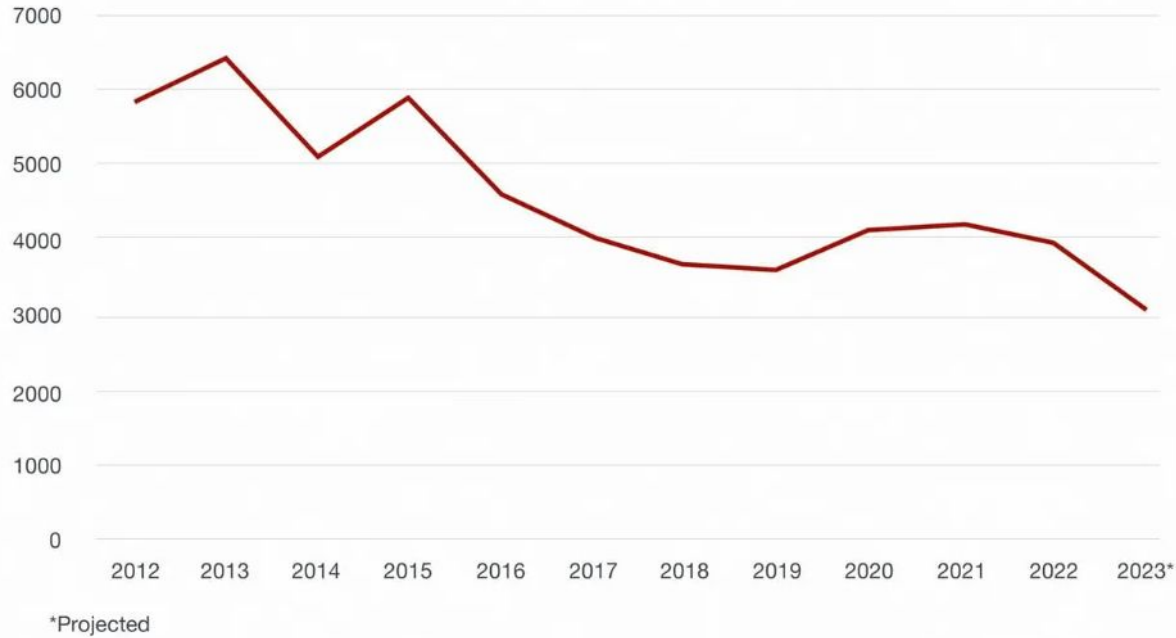


Outcome

Source: iphouse.cn



District Court Patent Infringement Suits



Beyond district court litigation, patent litigants have continued to use ITC investigations (also down this year) and post-issuance proceedings before the PTAB. The USPTO reported 1,320 IPR petitions in the year ending Sept. 30, 2022, and is on track for about 1,250 this year. This represents a substantial decline from the average of 1,578 filings from FY2017-FY2021.

Invalidation Petitions in CNIPA:
7095 for 2022
7628 for 2021

Source: [Bijal Vakil and Will Wray,](https://www.allenoverly.com/en-gb/global/blogs/tech-talk/q3-patent-litigation-update)
<https://www.allenoverly.com/en-gb/global/blogs/tech-talk/q3-patent-litigation-update>



PATENT LITIGATION TREND IN CHINA

◆ Hot Venue for Patent licensing disputes

- ASI, AASI, AEI, FRAND terms, global rate, antitrust matter

◆ Vigorous Competitions

- global market, and local market

◆ High Damages (punitive damages)

- “Melamine” Case: RMB 120M;
- AUX Cases involving air conditioner: RMB 160M.

◆ An era full of Change



TRADE SECRET-REMEDIES



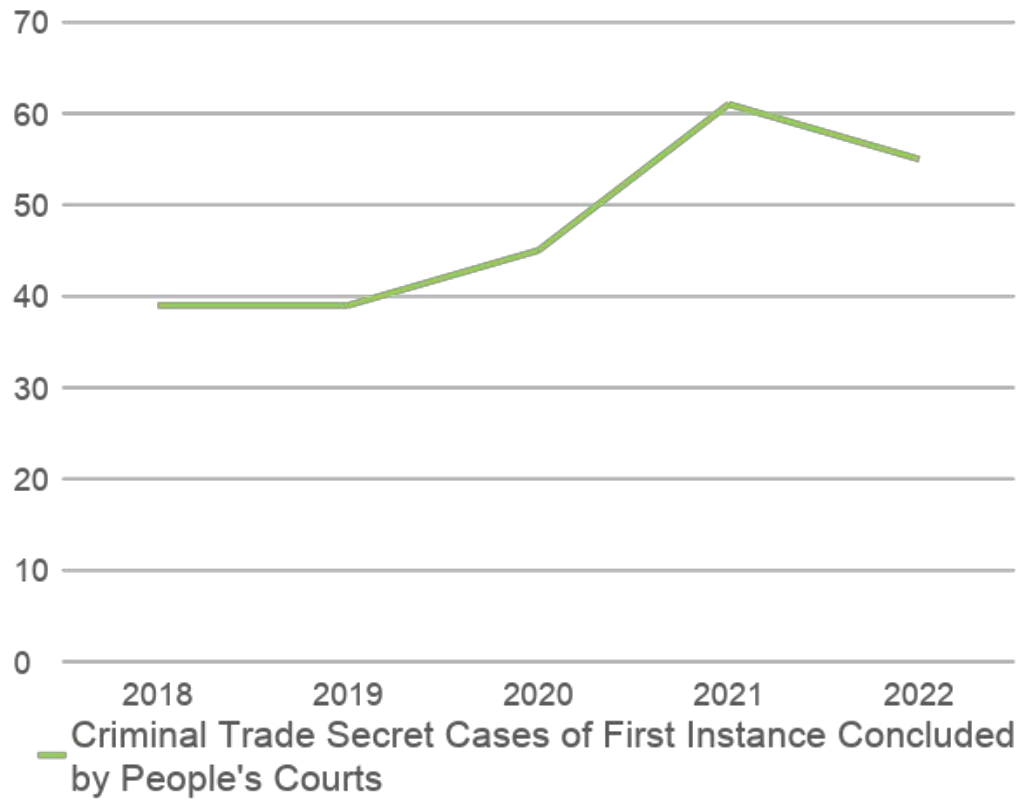
- Commonly used Defenses**
- Self R&D
 - **Reverse Engineering**
 - Non-Secret info
 - No Misappropriation



TRADE SECRET- CRIMINAL PROCEEDINGS

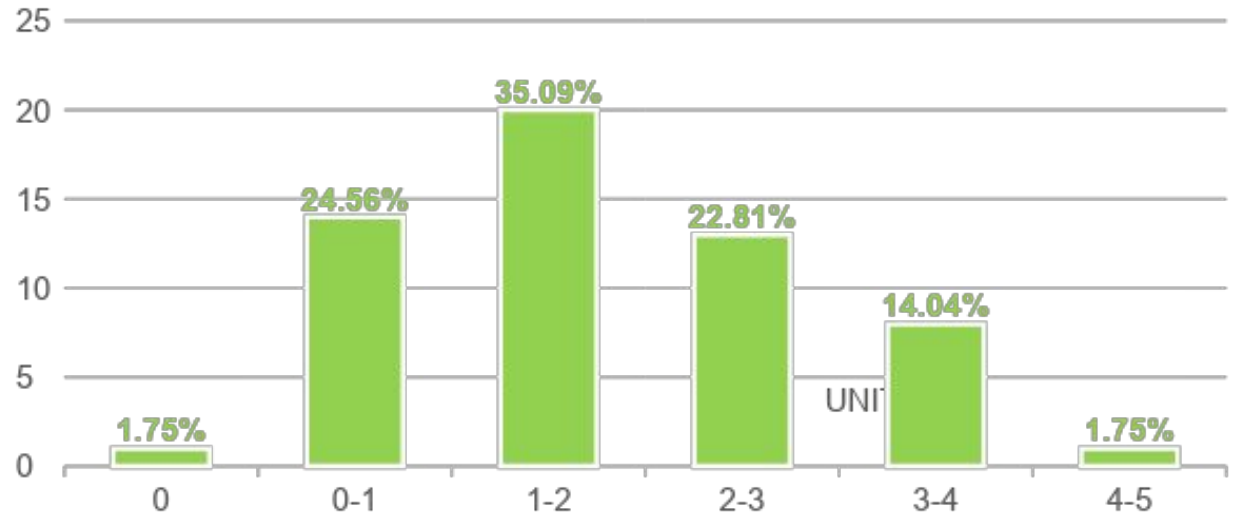
Criminal Trade Secret Cases

Source: Reports rendered by Chinese Courts in 2018-2022



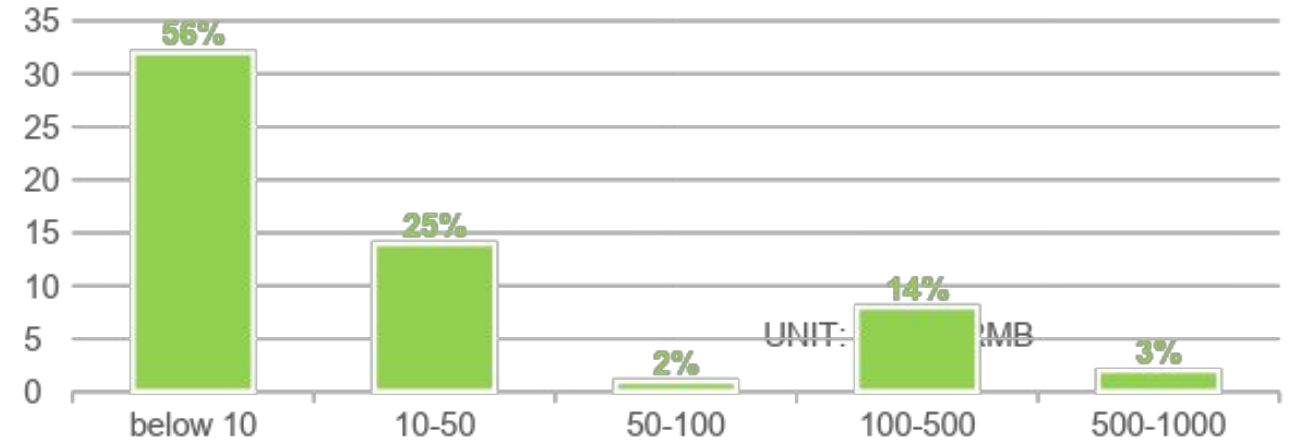
Term of Imprisonment

Source: iphouse.cn



Amount of Fine

Source: iphouse.cn

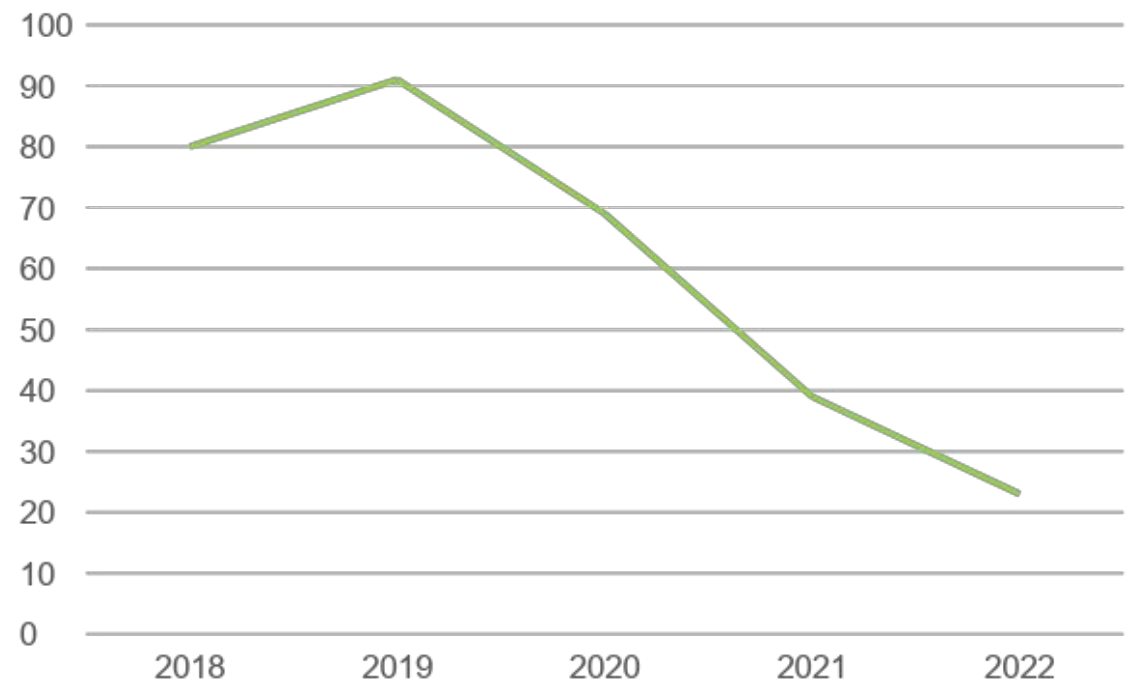




TRADE SECRET- CIVIL PROCEEDINGS

Trade Secret Infringement Cases

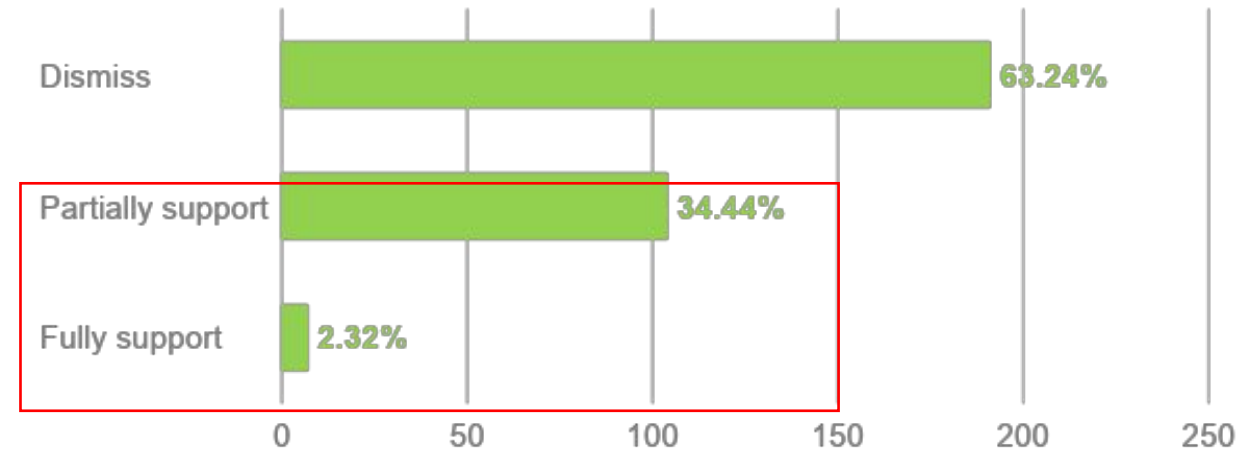
Source: iphouse.cn



— Trade Secret Infringement Cases of First Instance Concluded by People's Courts

Outcome

Source: iphouse.cn





TRADE SECRET PROTECTION TREND

◆ Amendment of Law(2019):

- lower burden of proof of the rights holders
- Add Punitive damages

◆ Increase Damages Compensation

- “Vanillin” Case: RMB 155 M
- “Melamine” Case: RMB 98M

◆ Apply Punitive Damages

- “Carbo” Case: Punitive factor: FIVE





CONCLUSION

Factors	Patents	Trade Secrets
Enforcement Difficulty	√	
Term of Protection(commercial life)	10-20 years	√ No Limitation
Threshold for establishing the rights	√	
Liability	√	√ √ (criminal)
Easy to copy		√
Other factors(process, algorithm, data, non-eligible matters, cost)		√

Not Universal Conclusion:

- Short life, easy to reverse/copy=Patent Protection
- Long life, high commercial value, not easy to reverse/copy=Trade secret Protection



Xiaoxia(Sarah) ZHANG

Partner

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Area of Practice

Ms. Zhang specializes in IP litigation and dispute resolution, involving patent, trade secret, and unfair competition. Ms. Zhang has extensive experience in handling IP infringement matters, especially patent infringement and invalidation cases. She provides services for clients from various technical fields such as automotive, medical devices, LCD/OLED display technology, communication, and has particular expertise in areas involving specialized and sophisticated techniques. During her long-term practice, Ms. Zhang has accumulated comprehensive litigation experience, and has shown outstanding performance in litigation strategy determination, case management, litigation strategy implementation, and licensing negotiation, etc. Ms. Zhang has represented a number of international and domestic industry leaders to deal with various types of IP disputes. Ms. Zhang has represented more than 200 litigation cases, among which several cases have been selected as “Exemplary Cases” by the Supreme People's Court, Guangdong High People's Court, Zhejiang High People's Court and Shenzhen Intermediate People's Court etc. She also represented more than 300 invalidation cases before CNIPA covering design, invention and utility model in different technical fields.

Work Experience and Education

Ms. Zhang joined KWM in 2012. Prior to joining the firm, Ms. Zhang served at Patent Reexamination Board of CNIPA for 8 years, focusing on patent examination, review and invalidation proceedings. She also represented the Patent Reexamination Board in administrative litigations as defendant.

Ms. Zhang obtained her Bachelor's and Master's Degree of Engineering from Harbin Engineering University in 2002 and 2004 respectively. She also obtained a Juris Master's degree from Renmin University in 2014.

Awards and Rankings

- “Star of Tomorrow”, Legal 500 Asia, (2023)
- “Rising star” & Recommended attorney, Legal 500 Asia, (2022)

KWM GLOBAL OFFICES

GLOBAL

L
32
Physical Offices

36
Cloud Offices

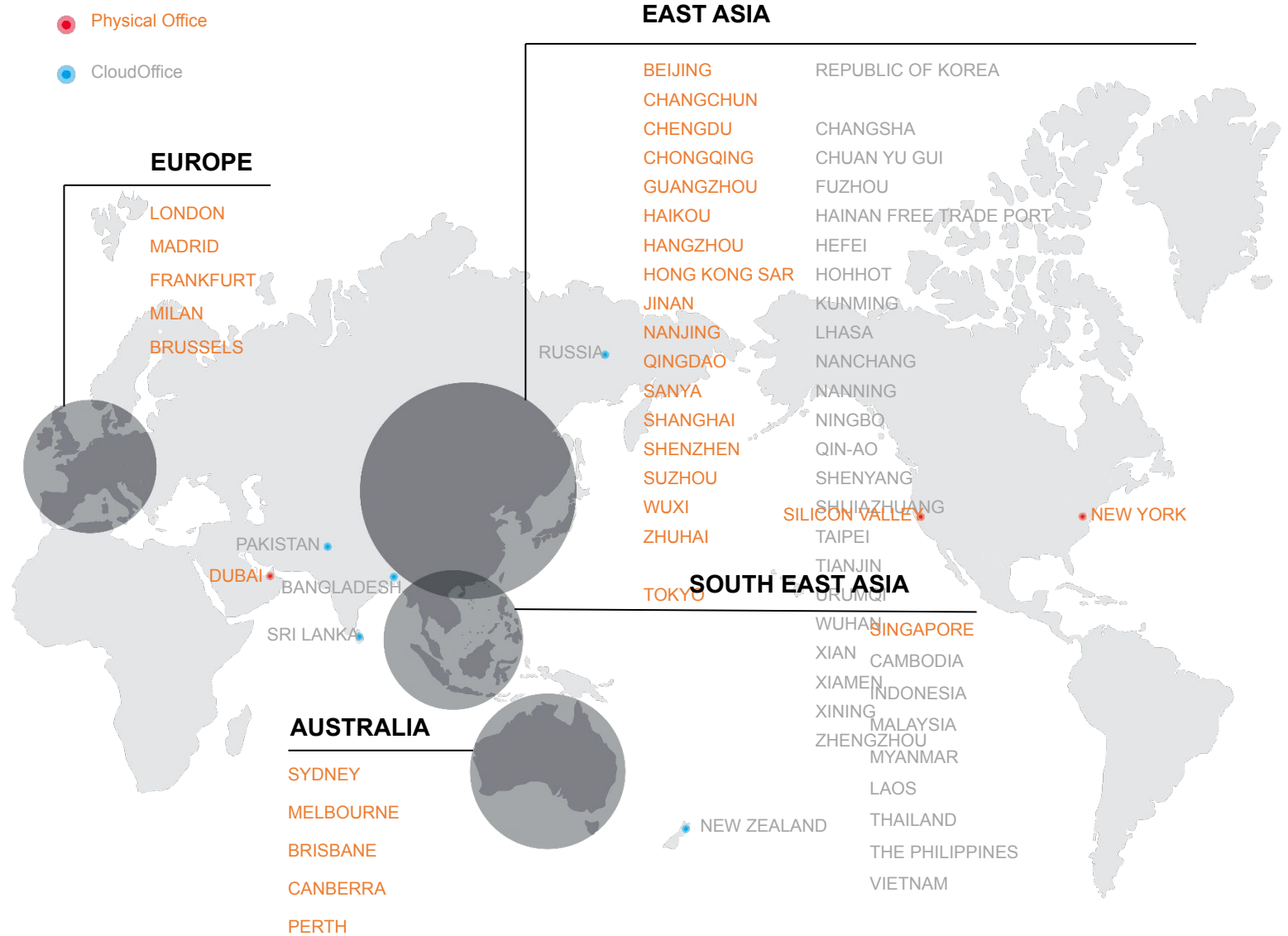
710+
Partners

3000+
Professionals

CHINA

A
17
Physical Offices

470+ Partners
1900+ Professionals



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THANKS

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