



New Matter

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The Newest IP Threat in China: IP Hijacking (Part 1 of 2)



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This is the first of a two-part series of articles relating to IP protection in China.

INTRODUCTION

MOST PEOPLE ARE AWARE that China is a hotbed of counterfeiting activity. Literally everything, from clothing to electronics to automobiles, can be copied in China. Many corporations have taken steps to protect their products and services from the flood of counterfeits being made in China and then exported around the world.

However, there is a new danger today, potentially even more threatening than counterfeiting. The newest threat is IP hijacking, which refers to a company (or individual) registering IP rights in China that it does not rightfully own. While counterfeiters can tarnish a company's reputation and/or hurt sales of legitimate products, IP can go even further. Using China's legal system—in effect, home-field advantage—counterfeiters can close off a market of 1.4 billion people by

taking enforcement action against the rightful owner for IP infringement.

THE RISE IN IP HIJACKING

Due to international pressure, China has increasingly focused on protection of IP rights. Most people familiar with China agree that the overall legal environment in China for IP protection has markedly improved since China's accession to the WTO in 2002.

IP protection is currently a hot topic in China. China's leaders are determined to lead the Chinese economy from a manufacturing based economy to an "innovation-driven" economy. This obviously requires a strong IP protection system. Nearly every day in China, one can find news stories about IP rights—from announcements of new IP protection initiatives, to stories of big IP verdicts, both domestic and abroad. The sides of buses are plastered with signs exhorting the Chinese people to respect IP rights, and phone numbers for IP hotlines to report counterfeiting activities.

Ironically, IP hijacking is one (unintended) result of the Chinese government's focus on IP protection. Similar to the early days of the Internet, when domain name hijacking was rampant, Chinese entities now have a "gold rush" mentality, registering IP rights wherever and whenever possible.

Taking patents as an example, from 1985–2005 all Chinese and foreign applicants obtained about 1.5 million patents in China. However, *just in 2006 and 2007*, all Chinese and foreign applicants applied for nearly 1.3 million patents, with nearly 620,000 granted in the same timeframe. Of the 1.3 million patents applied for in 2006 and 2007,



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over 80% were filed by Chinese entities. From 2006 to 2007, patent applications filed by Chinese entities jumped by nearly 25%; in contrast, patent applications filed in China by foreign entities only increased by about 4%.

Looking at trademarks, from 1979–2001, all Chinese and foreign applicants filed nearly 2.1 million applications. However, from 2002 to 2006, the number of applications filed by all Chinese and foreign applicants was more than 2.7 million. In other words, in just 5 years, more trademark applications were filed than in the previous 20-plus years. Of the 2.7 million applications filed between 2002 and 2006, *nearly 90%* were filed by Chinese entities.

Chinese companies are increasingly paying attention to IP rights and protection. Given the two stories described in the next section, you should too.

