

The principle issues surrounding intellectual property development, its protection and enforcement are the same for all SMEs, however, the specifics of how they should be approached will be unique to each. The approach to IPR protection outlined is relevant to all SMEs and not only those dealing with China. As with many other issues, a few basic actions can go a long way and IP is no exception.

Helpdesk customers fall into broad customer profile. There are around 23 million small and medium-sized enterprises (SMEs) in the European Union – that is 99% of all enterprises. SMEs provide over 100 million jobs in Europe and in some sectors account for more than three-quarters of all jobs. SMEs therefore make up the backbone of Europe's economy.

Hundreds of thousands of these European SMEs covering a wide range of business sectors engage in business with China either through exports, imports or investments. Most of these SMEs do not currently have, or are at least not aware of, IPR infringement problems in relation to their China business.

In targeting these SMEs an important objective of the China IPR SME Helpdesk will be to raise the collective awareness and capacity for developing IP value and its protection and IPR enforcement particularly within the China context. The overriding objective will be to instill the importance of PREVENTATIVE measures to IP protection and IPR enforcement. Practical and tailored training guidelines will help empower SMEs to understand the importance of IP value and also to make business decisions which reduce risks.

A second important customer profile of the Helpdesk will include those SMEs already encountering IPR problems in relation to their China business. In targeting these SMEs an important objective will be to provide relevant information and practical options for the resolution of current IP issues.

Within both broad groups there will be sub-groups, which will be categorised either by industry or service sector, by IP asset type or by the type of IPR enforcement challenges encountered.

In all correspondence with the Helpdesk it will be important for SMEs to provide details of their particular characteristics so that the Helpdesk services can be tailored as much as possible. We encourage you to [ask a question](#) and provide relevant company information which will remain confidential. (i) types. The Helpdesk provides common information services relevant to each customer profile. If you have specific questions or queries you are encouraged to use our website to [ask a question](#) .

## IPR - The Basics

The first step in developing the value of IP in your business and managing risk is to build awareness within your company, particularly amongst senior management and the board, about [what is IPR?](#) Intellectual Property Rights are legally enforceable rights over the use of inventions or other creative works. They confer a right to exclude others from their use. This includes patents and utility models, industrial designs (or design registrations), trade secrets, trademarks, Geographical indications and copyrights. For more information about the definitions of IP and how they effect your business, please go to the [Finding your way around IP in China](#)

(ii). This will help you to answer an important strategic business issue of [why to protect IPR?](#) Intellectual property (IP) comprises as much as 75% of the market value of many SMEs yet the recourses required for both its realisation and protection is often significantly underestimated by these companies. IP value is derived from its unique characteristics and the right which excludes others from its use. IP and its protection can generate a financial return by better assuring the revenue streams of products and service sales, reducing future risks associated with business loss and increasing the value for the company.

During the due diligence stage of a company acquisition it is increasingly common to include and IP audit. This is designed to evaluate the effectiveness of the IP strategy and the value of IP assets of the target company. In this way, not only the value of IP but the in-house knowledge is considered an integral asset of the SME valuation. A company with a poorly managed IP system therefore will be considered to have a lower market value.

Finally, given the importance of IP in ensuring an innovative society and business growth, many governments promote and stimulate the application of scientific knowledge and the process of IP registration. Building IP will incur a cost on your business but if designed through an effective strategy will add value. (iii). It is true that many companies have developed valuable IP without recognising it, and risk it as a result. Both questions require ongoing review as your business evolves, and are key to understanding [how to protect IPR?](#) IPR protection requires the registration of IP and its effective enforcement. This is best achieved with an IPR strategy. The first priority of your company is to build awareness about the latent and future value of IP development and IP asset creation.

The Board of Directors is responsible for the company strategy and ultimately they must take ownership of the overall IPR approach by making IPR a board level concern. There is a need to designate an IP Manager or IP champion and make resources available to them. IP will then be more easily recognised in the company HR strategy and awareness more easily increased through IP training. In most cases the IP managers or IP champions can be identified from amongst those in the company with the most passion and knowledge of the issue.

The IPR champion will be tasked to engage with employees on IPR issues in order to build the importance of IP and its inclusion in day to day business processes. Having in-house competence is important when deciding on the development of IP. The in-house expertise will

also ensure cost-effective liaison and follow-up implementation with contracted IP specialists regarding IP protection and enforcement.

The implications for the company of IP development and the values and risks associated with IP need to be understood as part of the innovation process. By building awareness around IP development and protection you will create the building blocks necessary to implement an effective strategy.

No SME capable of engaging in China business is too small to develop an approach to protect its IPR. (iv).

### **IPR to suit you**

Developing a tailored IPR approach will depend on your company's sector of operation, your market positioning, your size and your stage of development, particularly with regards to your business with China. These issues will determine the value of IP within your company. By this stage, IP protection must already have been understood at both board and management levels so that IP enters the mainstream business process.

### **Developing an IPR Strategy**

You wouldn't think of starting a business without a HR strategy, market strategy or financing strategy, and for many SMEs an IP strategy is just as important for planning growth and minimising risk. Regardless of the stage of your business with China; be it in early planning or well-developed over many years, it is important to have in place an IP Strategy. As is the case with other company strategies, an IP strategy should be established within your company's corporate structure as a strategic priority and should integrate with other aspects of your organisation. It will likely affect staff positions, roles and responsibilities and business systems and procedures.

An effective IP strategy can more easily be achieved when ensuring that the strategy reflects your overall company business strategy which will take into account the level of importance of China business. At a commercial level this might be achieved by linking the IP strategy with technology commercialisation. In this way it will be possible to link investments related to IP to the returns generated by the business through its alignment with IP.

An important priority for the strategy will be to identify the most critical IP assets of your company and ensure that procedures are in place to develop and protect them. Similarly the

strategy should ensure a dynamic approach for how to convert new ideas into future IP assets, how IPR is to be distributed in cooperation with external parties and how the company will best respond to any infringements of its existing assets.

To support the effective implementation of an IP strategy there are a number of commercially available management systems. These might be used for example to review the status of filing and IP asset portfolios through a spreadsheet format. The key elements of a strategy are outlined in the following sections but are generally underpinned by an IP Audit.<sup>(v)</sup> This will require you to put in place a series of steps including:

- [IP Audit](#) An IP audit is an important element and starting position for your IP strategy. Even successful companies do not always realise what makes them unique and competitive and may not prioritise IP development and protection to reflect its real value. The IP audit is designed to highlight both the risks and opportunities IP represents to the company. This approach will identify gaps in IP portfolios as indicators of opportunity.

The objective of the audit is to determine the IP assets of your company, which future potential IP assets it might generate and the levels of risks faced, for example, through any gaps in protection. Generally the audit will be carried out across product and service ranges and for each department of the company. This will determine internal IP assets such as business processes or patented approaches and even the details of protection of company logos and branding. From the analysis of this audited picture you will be able to prioritise issues for resolution through a plan of action. The plan then requires the development of policies to ensure their effective implementation.

For more information on assessing the value of IP in your business please click [here](#) <sup>(vi)</sup>: to assess your current IP status and development needs. Through this you will be able to set out your priorities and rank internal IP assets.

- Having completed an IP Audit you can put in place effective [IPR Policy and processes](#) When the IP audit is complete a spreadsheet should be generated which outlines the IP asset types, classes and values using a ranking system. This will indicate registered and non-registered IP and those IP assets which offer the greatest potential and the associated risks within the portfolio. The analysis of this data will allow priority actions to be set once the mechanisms for calculating the cost of a patent or trademark registration have been developed. The implementation of priority actions requires procedures to be put in place. The cost of registration in multiple countries can be quite complex and professional online tools are available for this task. Other IP procedures will include, for example, ensuring that IP protection procedures or ones for the development of a project cycle for IP identification, development and protection are in place. Procedures for building employee awareness through IP training will also need to be established. Procedures will be enforced through effective quality control procedures.<sup>(vii)</sup> as part of the business process and [IPR quality control](#) Establishing effective quality control of the IP process will require a constant monitoring of the China market place for

violations and ensuring that action is taken in an effective and systematic manner as soon as IP violations are discovered.

Quality control measures will help ensure the implementation of procedures for reviewing employee contracts, Non-Disclosure Agreements, publications, licenses and the management of trade secrets. The quality control procedures would ideally be included as part of the job responsibilities of the IP officer.

Just as in the same way your company would ask a potential employee for references and carry out background checks, the same due diligence should be applied to new business partners in China, for example, suppliers and distributors. Checking the legitimacy of a potential business partner in China might extend to requiring them to provide a copy of the Chinese business licence. Inconsistencies between the trading name and the name on the licence might raise a red flag and would require further clarification.

Quality control will be made easier when your organisation has access to tools and data sources from the IP field. The World Intellectual Property Organisation for example has a [website](#) targeting SMEs and their protection and enforcement of IPR. (viii). In the early stages of developing the IP strategy, it may appear complicated and time consuming; however, to grow value in your IP assets this must become routine business practice.

- Implementing IP protection must be incorporated into your relationships with all of your stakeholder groups. SME stakeholder groups include SMEs employees, suppliers, distributors and other business partners. In order to reduce the risks of IPR infringement through key stakeholder relationships, protection procedures should be established. Due diligence is the first form of risk management in dealing with trading partners and can be supplemented by Non-Disclosure Agreements in order to manage exchanges between companies. Written IPR policies and non-disclosure clauses should be included in all employee contracts. When engaging in China related business with patent or trademark products which have been registered in Europe, your company must seek protection in China by registering in China. (ix) which broadly includes suppliers, distributors, cooperation partners, customers and your employees, particularly where these relationships relate to technology transfer. Technology transfer is the process of developing practical and commercial applications for the results of scientific research. As technology transfer is an important priority for many Chinese companies it is often transacted without adequate protection of IP within the agreement and subsequent counterfeiting has often resulted. If you choose transfer licensing as the preferred technology commercialisation model then you must build-in effective IP enforcement procedures. (x) or transfer of business knowledge.

- Business to business promotion must be reviewed to ensure effective risk management.

- At the same time, you need to understand the procedures and investments related to the registration of your IP rights. Registration of Trademarks and Patents in Europe does not provide protection in China. China is a 'first to file' country. There has been an increase in the number of bad faith filings (identity theft) by Chinese companies of foreign trademarks as well as their registration as company trading names,

occurring before the foreign party has registered their marks in China. As the system in China follows the 'first to file' rule then identity theft is becoming a significant problem. After following the 'first to file rule' the Chinese firm has the legal right to block the legitimate right owner from operating in the market. Not only can this stop the legitimate right owner from selling, manufacturing or exporting from China they can also flood their home markets with pirated goods. In these circumstances it is very difficult for the foreign party to prove its case without years of enforcement action. The most effective way to counter this problem is to file your trademarks and patents as early as possible in the China market. This is a good example of where prevention is more important than cure. (xi) and the monitoring of their enforcement.

### What if your IP is infringed?

It is recommended that a standard operating procedure be put in place when you encounter an IP enforcement problem. Enforcement of IP protection is problematic in China because it is difficult to catch pirates and serial pirates are not deterred because the penalties and fines are so low. Therefore you should assume that piracy is the norm rather than the exception. Register your rights in China early, monitor the market to see if you have enforcement issues but enforcement action is tough given burden of proof requirements. When you do have an enforcement problem you are welcome to bring your enquiry to the Helpdesk. For more information contact the Helpdesk at [enquiries@china-IPRhelpdesk.eu](mailto:enquiries@china-IPRhelpdesk.eu). In the event that you wish to choose a lawyer you should accept quotations and conduct initial meetings with at least 3 candidate IP firms. More information about finding the right lawyer is available [here](#). (xii) problem, for example, in relation to how to investigate the problem or how you might select an IP partner company. All the elements described here should be considered as an ongoing cycle of development which will be more manageable when your senior team actively builds an awareness and understanding of external factors, such as technological advances or competitive trends.