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Partnership with Medtech International



How to safeguard your IP rights in China



Dr Barbara Fleck

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Marks & Clerk LLP is a leading group of patent and trade mark attorneys with an associated firm of intellectual property lawyers, Marks & Clerk Solicitors.

Marks & Clerk LLP has a wide range of offices in the UK as well as in Canada, France, Hong Kong, Luxemburg, Singapore, Beijing, Shanghai and Malaysia.

Is it worthwhile protecting your IP in China?

Chinese Life Science Market in 2010: £30.7 billion

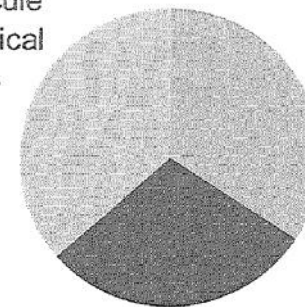
Top 10 pharmaceutical market in the world (£ billion)

Rank	2000	Size	2005	Size	2010 E	Size
1	US	92.0	US	160.7	US	285.9
2	Japan	35.6	Japan	39.9	Japan	49.7
3	Germany	10.4	Germany	14.7	Germany	22.7
4	France	10.4	France	12.9	France	17.2
5	UK	6.7	UK	9.8	China	14.7
6	Italy	6.7	Italy	9.2	UK	14.7
7	China	4.2	China	8.6	Italy	14.1
8	Brazil	3.7	Brazil	6.1	Canada	10.4
9	Canada	2.8	Canada	6.1	Spain	9.8
10	Spain	2.6	Spain	6.0	Brazil	9.2

Note: E stands for "Estimation"

Source: China Life Science Report UKTI, 2009

Small molecule
pharmaceutical
products
37%



Traditional Chinese
medicines
34%

Active pharmaceutical
ingredients
29%

IP Rights in the People's Republic of China



- Patents
- Utility Models
- Trademarks
- Design rights
- Copyright
- Domain names
- Know-how / confidential information
- Note: Hong Kong, Macau and Taiwan have an independent system for the protection for IP rights

The IP system in China is now heavily used by domestic and foreign applicants

Total number of patents granted by the Chinese Patent Office in 2009:
581,992

- 86.2% from Chinese applicants
- 13.8% from foreign applicants

Total number of patent applications filed with the Chinese Patent Office in 2009: 976,686

- 89.9% from Chinese applicants
- 10.1% from foreign applicants

Facts & Figures

RANKING	COUNTRY	2008	2009 ESTIMATE	2009 GROWTH
1	United States of America	51,653	45,790	-11.4%
2	Japan	28,785	29,827	3.6%
3	Germany	18,853	16,736	-11.2%
4	Republic of Korea	7,901	8,066	2.1%
5	China	6,128	7,946	29.7%
6	France	7,074	7,166	1.3%
7	United Kingdom	5,514	5,320	-3.5%
8	Netherlands	4,339	4,471	3.0%
9	Switzerland	3,749	3,688	-1.6%
10	Sweden	4,136	3,667	-11.3%

International patent filings under the PCT:
China as Receiving Office

Source: WIPO 2010

Advantages of the Chinese Patent Application System

- Easy to navigate - similar to European system
- Efficient with a high standard of examination
- Costs are comparable to or in many cases cheaper than costs in Europe or the US

Patent Application Timeline

Application Filed	- National filing or national phase from PCT
Request Examination	- within 3 years of priority
Publication	- nominally around 18 months from priority or 6 months from CN/PCT
Voluntary Amendments	- within 3 months of entering substantive examination
Actual Examination	- usually begins within 6 months to 2 years of request
Decision to Grant	- when every last “i” is dotted and “t” is crossed
Pay Grant Fees	- within 2 months of decision to grant
File Divisionals	- within 2 months of decision to grant
Annuities	- annually

Patent Prosecution

Patentability requirements are very similar to those in Europe:

- Novelty
- Inventive step
- Exclusions from patentability

Examples in the application are very important to demonstrate the use or effect of the invention and additional examples cannot be added or used as evidence during prosecution

In contrast to Europe, second medical use claims that define novel dosages/administration routes are not accepted

How much will it cost me?

- Filing an application: £2000 to £4000 (EP £2500 to £5000, US £1800-£4000)
 - Prosecution: £2000 to £5000 (similar to EP, US £3000 to £8000)
 - Grant: £600 (EP: £1300, US £1300)
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- Please note that the exact costs depend on many factors, such as number of claims, word count, number of priority claims, exchange rates...

Recent changes to Chinese patent law

- First filing

If the invention is made in China and you want to file your application outside China, security clearance from the Patent Office is required. Failure to do so will result in the loss of the application/patent in China.

- Joint Ownership

Agreement takes precedent- make sure to have an agreement in place before filing the application.

- Bolar type exemption from infringement

Enforcement

- Counterfeiting is still a considerable problem
- Judicial system is improving
- A large number of litigation cases is handled by the Chinese courts each year:
 - 24,406 first instance trial cases in 2008 (up 36.52% compared with 2007)
- There is no apparent bias against foreign companies

China should be part of your IP strategy:

- No right - nothing to enforce
- Think ahead
- Plant your flag now

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Thank you!

感谢聆听！

Marks & Clerk LLP