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1. Intellectual Property Rights for SMEs: Why are they relevant to you?

Intellectual Property (IP), as an intangible asset, is a key factor in the competitiveness of your business in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to Small and Medium-Sized Enterprises (SMEs) as they internationalise their business to areas such as Mainland China. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only means of protecting innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or IP sales, as well as a significant pull-factor when attracting investors.

Intellectual Property Right (IPR) infringement is one of the most common concerns for businesses when dealing with countries across Asia, and its impact on your company could be substantial. It can lead to loss of business, revenue, reputation and competitive advantage, which affect SMEs both abroad and in their core domestic markets.

2. How does China's IP legal framework compare to that of the EU and international standards?

China and European Union Member States are members of the World Intellectual Property Organisation (WIPO) and party to international agreements on protection of IPR, namely the Paris Convention, Berne Convention, and TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights). Therefore, the scope of IPR protection (e.g. the types of rights, duration of protection, geographical extent of protection, and basic protection requirements) is in principal the same in China and Europe. However, there are some differences which are useful to understand in order to efficiently manage your intellectual property in China. The table below gives a broad comparison between the Chinese and European IP systems¹ and highlights some of the main differences and similarities.

Note that Mainland China, Hong Kong, Macau, and Taiwan are separate jurisdictions, so the information outlined below only refers to Mainland China. For comprehensive advice on IP protection and enforcement in Hong Kong, Macau, and Taiwan, consult the China IPR SME Helpdesk [factsheets](#) and [guides](#), or contact our [IP Expert](#) for more personalised advice.

Mainland China

In general, only registered IPR is protected

If you have not formally registered your IP assets including: patents, utility models, design patents and trade marks in China, then you cannot enforce them.

Although copyright does not need to be registered in China, registration is available and advisable as Chinese courts require registration of copyright or notarised proof of copyright in order to accept your case.

Your IPR is only protected from the date of registration

Your IPR is unprotected during the period between filing and registration. You can only start enforcement procedures once formal registration has been published.

IPR is territorial

This means that IPR registered in China is only protected in the territory of China and therefore is not protected in Europe.

Patents and trade marks can be extended internationally

China is party to the Patent Cooperation Treaty and the Madrid System administered by WIPO. This can simplify the international extension procedure for patents and trade marks as formalities for other member jurisdictions can be initiated at your local IP office.

Registration

In China, patents refer to three distinct IPRs: *invention patents*, *utility models*, and *design patents*. These IPRs can be registered at the State Intellectual Property Office ([SIPO](#)).

Trade marks can be registered at the China Trademark Office ([CTMO](#)).

Registration of *copyright* is not compulsory in order to obtain protection but can help in proving the ownership of the copyright in the case of infringement. *Copyright* can be registered at the China Copyright Protection Centre (CCPC).

Geographical indications are registered with the General Administration of Quality Supervision, Inspection and Quarantine ([AQSIQ](#)). A collective or certification trade mark can be applied for at the CTMO. Lastly, there is the option to register GIs with the Chinese Ministry for Agriculture, which is so far untested in practice.

Europe

You might be able to enforce IPR without registration

Under certain conditions, proof of earlier use in European country markets might be sufficient to enforce unregistered IP assets.

Conditional protection is granted from the date of filing

You can start enforcement proceedings for your IPR as soon as you have filed your application. However, if the IP application is rejected, your enforcement efforts are not recognised.

IPR is territorial

This means that IPR registered in a European country is only protected in that country and protection does not extend to China.

Patents and trade marks can be extended internationally

European Union countries are party to the Patent Cooperation Treaty and the Madrid System administered by WIPO. This can simplify the international extension procedure for patents and trade marks as formalities for other member jurisdictions can be initiated at your local IP office.

Registration

Patents, *utility models*, *designs*, and *trade marks* can be registered in every EU Member State separately within the Intellectual Property Office, a list of offices is available here: <http://www.innovaccess.eu/>

Patents can be protected in several EU Member States via a single procedure at the European Patent Office ([EPO](#)).

Trade marks and designs can be protected EU-wide within the Office for Harmonization in the Internal Market ([OHIM](#)).

Copyright does not require registration. You should keep a record of authorship and a date of establishment of a work of art in order to enforce your copyrights.

Geographical indications are registered at the EU-level with the [European Commission](#).

¹ It is important to note that legislation and procedures as described in the table may differ among European Union Member States. The table above highlights some of the main differences between China (Mainland China excluding Macau, Taiwan, and Hong Kong) and Europe, however, it is important that you consult with your local IP attorney to get full and up to date information on IP laws in your country.

3. Trade marks

A trade mark is a sign that serves the specific and primary purpose of identifying the goods or services of a producer, thus allowing the consumers to distinguish goods or services of one producer from those of another. The sign may be composed of words, devices, letters, numerals, three-dimensional signs (shapes), combinations of colours, or any combinations of the above, sounds, or scents.

Mainland China

Visual and sound trade marks are recognised

Only trade marks which are made up of words, graphics, a combination of both, colour combinations, 3D marks, or sound marks are recognised in China. China does not recognise scent trade marks.

Registration of Chinese translations of a trade mark is recommended

Although it is not required by Chinese laws it is useful to translate trade marks (composed of words) into Chinese in order to be better protected.

There are three common ways of choosing a Chinese trade mark name: a) translation; b) transliteration; c) combination of these two methods. The best trade marks are those that sound the same and also make reference to a defining characteristic of the brand or have a positive meaning in Chinese culture.

Note that registrations in Chinese characters and in Western scripts are two separate registrations.

Trade mark registration generally takes up to one year

Even though trade mark registration procedures in China are speeding up, registrations often still take around a year to complete. The revised Trade Mark Law enacted in 2014 clearly stipulates that the examination takes nine months, followed by a three month period after it has been published in the Trade Mark Gazette during which it is open for opposition. Note that you have no protection until the trade mark has been registered.

China uses the International Classification of Goods and Services, but makes a further subclasses division

China uses the International Classification of Goods and Services (Nice Classification) which is divided into 45 classes. However, in China, each of the 45 classes is divided into subclasses. It is therefore crucial to have the correct subclasses registered.

Europe

Visual, sound and scent trade marks are recognised

European Union Member States recognise not only visually perceived marks and sound marks, but also other types of marks such as scent trade marks.

European trade marks do not require translation into other European languages

Trade marks composed of words in any European language do not necessarily need to be translated into different European languages.

Attention must be paid to ensure that the trademark does not trigger a grounds for refusal in any official EU language due to that trade mark carrying an unintended meaning in a foreign language.

Community trade mark registration can be granted in six to nine months, and National trade mark registration can take from several months to a few years

If an application for an EU trademark (Community trade mark) at the Office of Harmonization for the Internal Market (OHIM) is straightforward and there are no objections, a trademark could be granted in six to nine months.

Depending on the country of registration, your national trade mark registration can take between two to eighteen months for most Member States. However, your trade mark will have conditional protection from the filing date as long as your trade mark is eventually officially granted.

European Union countries use the International Classification of Goods and Services

European Union countries use the International Classification of Goods and Services (Nice Classification) divided into 45 classes with no further division into subclasses.



4. Patent rights

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something or offers a new technical solution to a problem. A patent prevents an invention from being commercially made, used, distributed, or sold without the patent owner's consent. The patent system in Mainland China includes the following kinds of patents: invention patents, Utility Models (Ums) , and design patents. With regard to patents, in the European Union, all countries have invention patent protection, and only some countries have utility model patent protection. Design rights in the EU have separate legal protection.

Mainland China

Registration takes less than one year for utility model patents and 3 to 5 years for invention patents.

Invention patents are valid for 20 years and are normally granted within 3 to 5 years. Utility Model patents are valid for 10 years and normally granted within 1 year.

Invention patents made in China need to first apply for a confidentiality examination if the first application was made outside of China.

If a party wishes to file a patent application in a foreign country first for an invention that is made in China, it must apply to the State Intellectual Property Office first for a confidentiality examination. If this application is not made, the party can never obtain a valid patent for China.

Utility models are widely used forms of IPR for inventions in China

Utility models are new technical solutions which involve the specific shape and/or structure of a product, which are fit for practical use. While the scope of protection of utility models is similar to invention patents, utility models are granted faster and require no substantive examination.

Europe

Time for registration depends on EU country

There is no EU patent law yet (the EU Unitary Patent is expected to be available as of 2017), and every EU country has its own patent law and regime. The time for registration of a patent depends on the law and the practice of the specific EU country.

There is no mandatory confidentiality examination.

Patents can be filed in any EU member state where registration is desired or can be registered through EPO and PCT procedures. Do check if there is a provision in the law that states that you have to file your patent with defence authorities, as for example in France.

Utility models are less common in Europe

Check with your national IP office or browse the [Innovaccess website](#) for similar protection as not all European Union countries offer this form of protection.

5. Design rights

The patent system in Mainland China includes design patents. Design rights in the EU have a separate legal protection.

Mainland China

Designs need to be registered as design patents to be protected.

As with invention patents and utility models, a design which has been previously disclosed anywhere in the world before applying for registration in China will not be registrable. Additionally the design must be sufficiently distinguishable from other designs. Only after formal registration can you enforce your rights to a design.

Registered designs are protected for 10 years, unregistered designs are not protected.

A design patent gives you the exclusive right to use or allow others to use your design in China for 10 years.

Europe

Designs can be protected either as an unregistered Community design or as a registered design.

The European system gives you an option to have your design protected for three years from the date it was first made available to the public within the European Union without necessity of registration.

However, if you wish to have your design protected for more than three years, you should register at the EU level or in your country.

Usually, designs that change often, such as those of fashion, can still be protected even if unregistered, whereas designs with longer lifespans designs should be registered.

Registered designs are protected for 25 years.

A registered design gives you the exclusive right to use or allow others to use it for 25 years in the whole territory of the European Union or in the State where it was registered.

6. Copyright

Copyright is a right enjoyed by the author or creator of an original work and his/her successors or assigned licensees. It includes 'moral rights,' which are personal and cannot be waived, licensed or transferred, and 'economic rights,' which give you the exclusive right to exploit the work for economic gain, including the right to reproduce, distribute, perform and use other means to exploit the work. Copyright protects only the tangible expression of an idea (a 'work'), not the idea itself.

Mainland China

Copyright is protected from the date of creation

You do not have to register a copyright to enjoy protection; however, registering your copyright is an option in China and is recommended in order to prove ownership.

Copyrights can be registered at the Copyright Protection Centre in China, www.ccopyright.com.

Europe

Copyright is protected from the date of creation

You do not have to register copyright to enjoy protection. Only a few EU Member States provide copyright registration to provide proof of ownership (please check for availability of registration here: <http://www.innovaccess.eu/>). You should keep a record of authorship and a date of establishment of a work of art in order to enforce your copyrights.

7. Trade secrets

Trade secret protection revolves around the protection of know-how. In most EU countries and in China, it does not form part of the intellectual property system, as a trade secret is only valuable or able to be protected when it is not publicly disclosed. IP gives you protection when it is registered (which involves disclosure), or automatically in the case of copyright, whereas trade secrets need to be kept secret in accordance with the laws of the country where you want to be protected in.

Mainland China

Trade secrets need to be protected by physical, technological, and contractual measures in order to be protected.

Trade secrets need to be protected in accordance with Chinese Anti-Unfair Competition Law, otherwise there will be no protection.

In China, only trade secrets that are undisclosed to the public, that give a competitive edge, and that are protected by physical, technological, and contractual measures qualify for trade secret protection.

Europe

As trade secret protection is protected differently in every EU country, you will need to check in the country where you want your trade secrets to be protected.

For example, in Italy, trade secrets are protected under the intellectual property law. In France and Germany, they are protected under unfair competition laws, in the Netherlands under tort law, and in the UK and Ireland under breach of confidence rules. Please consult the EU IPR Helpdesk or another legal expert to make sure your trade secret is protected in accordance with the law of your EU country.



copyright

8. Geographical Indications (GIs)

GIs refer to the signs that denote the place of origin of the goods, including their specific quality, reputation or other features as mainly decided by the natural or cultural factors of those regions.

Mainland China

European geographical indications/designations can be protected through registration with the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), can be protected by a trade mark registration with the CTMO, and can be protected by registration with the Chinese Ministry of Agriculture.

It is possible to protect geographical indications/designations of origin as Chinese collective or certification trade marks, and protection can be granted over all types of goods and services.

In addition to registering as a trade mark (collective or certification), GIs can be registered at AQSIQ by your GI organisation to provide an extra layer of protection with regards to the quality and standards of the product.

Lastly, there is the option to register GIs with the Chinese Ministry for Agriculture, which is so far untested in practice.

For more information, download the China IPR SME Helpdesk [Guide to Geographic Indications](#) in China.

Europe

European geographical indications/designations of origin are protected in the whole European Union.

This protection is limited to agricultural products and foodstuffs, namely: wines, cheeses, hams, sausages, seafood, olives, beers, breads, fruits, raw meats, vegetables etc.

For more information please visit the European Commission's [EU Quality Schemes](#) website.

9. Using Customs to Block Counterfeits

Customs action in the European Union and China can be an effective way of blocking counterfeit products from entering a foreign market. No matter whether you are working with customs in the EU or China, it is important that you maintain close contact with these authorities and supply relevant product information in order to assist them in making appropriate, timely decisions when inspecting goods crossing their borders.

Mainland China

Customs authorities inspect both imported and exported goods.
The Customs Law of the Peoples Republic of China prohibits the export or import of goods from or to China that infringe upon the IPR of another.

Chinese Customs have the authority to protect IP Rights by confiscating infringing goods and imposing fines on infringers.

Register your IP with customs.

If you wish customs to actively monitor your products, you must register your IPR (trade marks, patents and copyrights can be registered) with Chinese Customs. Registration is subject to a fee and lasts for a period of 10 years or until the IPR expires.

For more information on registration, visit the Customs [dedicated web portal](#) or download the China IPR SME Helpdesk [Guide to Using Customs to Protect Your IPR in China](#).

Europe

Customs only inspects imported goods.

Customs authorities of the European Union have the right to halt and detain goods entering the EU that are suspected of IPR infringement.

No formal registration with customs required.

In Europe, when customs make , they can detain possible infringing goods even without formal pre-registration. Yet, once suspected infringing goods are detained, an Application for action (AFA) must be submitted within tight deadlines. If not, goods will be released. It is therefore in your interest to lodge an AFA, free of charge for a period of one year. Thanks to the information provided by the right-holders in the AFA, customs may identify more easily goods suspected of IPR and take the necessary action.

For more information, refer to the European Commission's dedicated [website](#).

10. Enforcement of Intellectual Property Rights

If your IP assets are being infringed, there are four main avenues of enforcement which you can consider: a) administrative actions; b) civil litigation; c) criminal prosecution; and d) customs seizures. In many cases, however, private mediation via legal professionals is also very effective and should be considered as a viable option.

Mainland China

It is the responsibility of the IPR holder to collect evidence to be presented in court.

In the majority of cases, Courts will not order the suspected infringer to provide evidence of the infringement. It is the duty of the IPR holder to collect evidence of infringement, for which it is recommended to use a legal investigation company or a law firm. However, according to the revised Trade Mark Law, in certain circumstances the infringer can be ordered to provide evidence.

The court determines the time limits for producing evidence in the pretrial preparation phase.

This time limit may be negotiated by the parties and needs to be approved by the court.

All documents must be submitted in Chinese and must have notary confirmations.

You can enforce your trade secrets in court and with administrative authorities.

Trade secrets are not only protected under civil and criminal law but also under administrative law.

For more information on trade secrets, download the China IPR SME Helpdesk Guide to Protecting Your Trade Secrets in China.

Europe

The infringer can be ordered to provide relevant information and evidence to court.

In Europe the courts can help the IPR holder collect evidence by ordering the suspect infringer to provide relevant information and evidence.

Evidence can be presented during the whole court proceeding.

All documents should be submitted in the official language of the court and should have notary confirmations if requested.

You can only enforce your trade secrets in court.

Trade secrets are protected under civil and criminal laws, they are not protected under administrative laws.

11. Related Links and Additional information

China IPR SME Helpdesk resources:

- IP Factsheet – Mainland China
http://www.china-iprhelpdesk.eu/sites/china-hd/files/public/Mainland_china.pdf
- Guide to Trade Mark Protection in China
http://www.china-iprhelpdesk.eu/sites/all/docs/publications/China_IPR_Guide-Guide_to_Trade_Mark_Protection_in_China_EN-2013.pdf
- Guide to Patent Protection in China
http://www.china-iprhelpdesk.eu/sites/all/docs/publications/China_IPR_Guide-Guide_to_Patent_Protection_in_China_EN-2013.pdf
- Design Patent Guide
http://www.china-iprhelpdesk.eu/sites/all/docs/publications/China_IPR_SME_Helpdesk-Design_Patent_Guide.pdf
- Guide to Geographic Indications in China
http://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN_GI_online.pdf
- Enforcement of Intellectual Property Rights in China
http://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN_Enforcement_Aug-2013.pdf

Related links:

- State Intellectual Property Office (SIPO)
www.english.sipo.gov.cn
- China Trade Mark Office (CTMO)
<http://www.ctmo.gov.cn/>
- Copyright Protection Center of China (CPCC)
<http://www.ccopyright.com.cn>
- General Administration of Customs in China (GACC)
<http://english.customs.gov.cn>
- Office for the Harmonization of the Internal Market (OHIM)
<http://oami.europa.eu/ows/rw/pages/index.en.do>
- InnovAccess
www.innovaccess.eu
- European Patent Office
<http://www.epo.org/>

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The China IPR SME Helpdesk provides free, confidential, business-focused advice relating to China IPR to European Small and Medium Enterprises (SMEs).

Helpdesk Enquiry Service: Submit further questions to the Helpdesk via phone, email (question@china-iprhelpdesk.eu) or in person and receive free and confidential first-line advice within three working days from a China IP expert.

Training: The Helpdesk arranges training on China IPR protection and enforcement across Europe and China, including Hong Kong, Macao and Taiwan, tailored to the needs of SMEs.

Materials: Helpdesk business-focused guides and training materials on China IPR issues are all downloadable from the online portal.

Online Services: Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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