

WORLD INTELLECTUAL  
PROPERTY REVIEW

# wipr

Issue 2, 2024



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The patent strategy behind  
Nvidia's explosive growth

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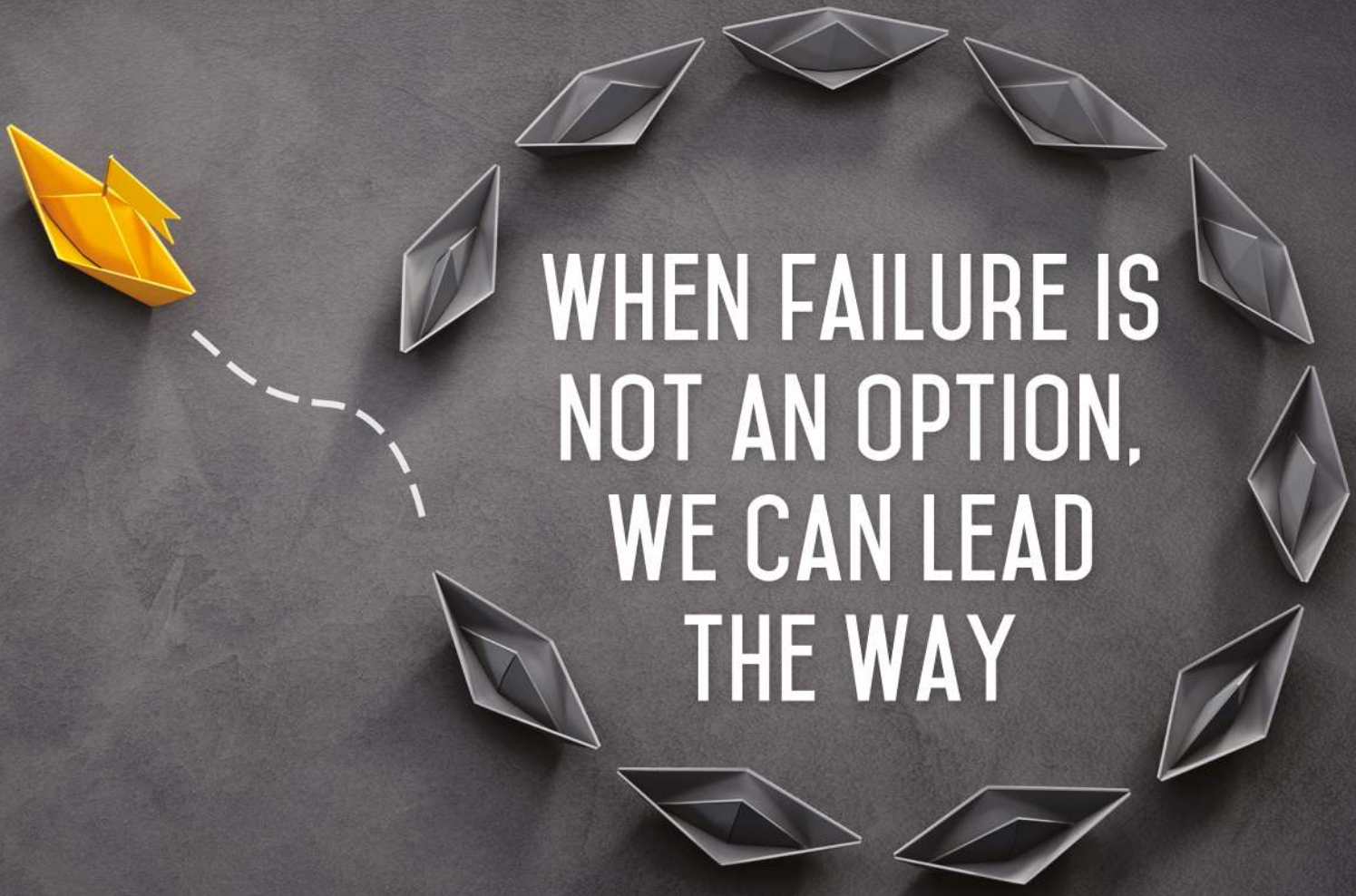
**China's finest IP pros**  
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you 'plan, not assume'

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## Open source and the data elephant

It recently dawned on me that 'open source' is a term I'd be hearing a lot more about for a long time.

I first understood its importance during this year's IP Week event in Singapore. During a panel I was moderating on artificial intelligence (AI), a lawyer for Meta's Asia operations, Hee-Eun Kim, explained how Facebook's parent company has shared more than 1,000 AI models for research purposes. This includes Llama, the company's most advanced AI model yet.

"The idea is that it will democratise access to this technology so more people can use it, so we can bring more innovation, more competition and grow the ecosystem so people can use these tools," said Kim. The discussion afterwards revealed how important this concept was to AI's development.

Meta's CEO Mark Zuckerberg, himself the beneficiary of open source software (Facebook's profile feed was one of the first iterations of useful AI on the internet), said of Llama's release: "Open sourcing any given model isn't giving away a massive advantage over the next best models at that point in time."

Meta joins Amazon, OpenAI, and many other companies that have reached the same conclusion. The world's number one patent filer for a decade, Huawei, realises this too. At an innovation event it held online in September, the company went to great lengths to share its open source efforts.

Huawei's Harmony operating system, used in smartphones, has become the number one open source project in China. So it seems everyone using the same foundational systems benefits all.

Well, nearly all. Two points strike me. One, the definition of 'open source' varies depending on each generous benefactor. Licensed users of Llama and Google's Gemma foundational AI, for example, are restricted by what they can do.

Secondly, as evidenced by many audience questions in Singapore, data is the elephant in the room. No major tech companies have released the data on which their AI systems are trained. With dozens of copyright lawsuits filed by creators still to play out, this is understandable. Apparently not all rights owners, IP traditionalists if you will, are on board with Big Tech's open source mission.

We're just starting to discover what this mass giveaway of billions of dollars in R&D means for IP more widely.

And it's worth watching how this huge test for the 'everyone benefits' model plays out.

**Tom Phillips, Group editor**



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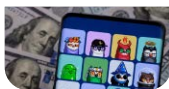
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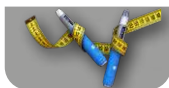
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IMAGE: SHUTTERSTOCK / OLHA YEFIMOVA

## ● GLOBAL

## WIPO: emerging markets science and tech progress 'fantastic for world'

China and the US continue to dominate the world's science and technology (S&T) clusters according to the latest *Global Innovation Index* (GII) report, released by the World Intellectual Property Organization (WIPO).

The ranking, based on patent filings and scientific publications, highlights local hubs of innovation, with Tokyo-Yokohama and Shenzhen-Hong Kong-Guangzhou securing the top two spots globally.

Each year, the GII ranks countries and economies around the world. The GII top-100 S&T Cluster ranking identifies local concentrations of "world-leading" science and technology activity. The report was launched in Singapore where WIPO director general Daren Tang was attending IP week.

The top ten S&T clusters by size were Tokyo-Yokohama (Japan), Shenzhen-Hong Kong-Guangzhou (China/Hong Kong), Beijing (China), Seoul (South Korea), Shanghai-Suzhou (China), San Jose-San Francisco (US), Osaka-Kobe-Kyoto (Japan), Boston-Cambridge (US), Nanjing (China), and San Diego (US).

Tang said at the launch of the study:

"Science and technology clusters serve as the foundation of robust national innovation ecosystems. It is encouraging to see these clusters thriving not just in the mature hubs of industrialised nations, but also in the emerging innovation hotspots of selected developing economies.

"WIPO will continue to help these clusters to use IP to translate promising research into tangible, real world solutions."

IMAGE: SHUTTERSTOCK / ZMOTIONS



While there is little change among the top ten S&T clusters, a different picture emerges when looking at the top 100. For the second consecutive year, China leads with 26 clusters in the top 100.

Clusters located in middle-income economies experienced the strongest S&T growth. Notably, Hefei and Zhengzhou in China have seen substantial increases in

S&T output, recording growth of 23% and 19% respectively.

Cairo (Egypt) with 11% S&T output growth, experienced the highest growth rate amongst other middle-income economy clusters, followed by an 8% increase from Chennai (India) and Istanbul (Turkey). "Emerging economies are beginning to become players in the innovation space, and I think that's fantastic for the world," said Tang.

"No country has a monopoly on great ideas. We need to be able to work with all these different countries to make the world a better place."

In contrast, clusters in high-income economies, particularly in North America and Europe, experienced slower growth, with 37 of the 63 clusters based in these areas witnessing a decline in S&T output.

Cambridge in the UK and San Jose-San Francisco in the US are the clusters with the most intensive S&T activity in proportion to population size, followed by Eindhoven (Netherlands), Oxford (UK), and Boston-Cambridge (US). ●

## ● UNITED STATES

## Fed Circ backs Chinese firm over artificial sweetener patents

The US Court of Appeals for the Federal Circuit upheld a ruling by the International Trade Commission (ITC), which invalidated artificial sweetener patents held by Celanese International and the company's suit against a rival for infringement.

The court's precedential decision, issued in August 2024, sides with Chinese competitor Anhui Jinhe Industrial, which had challenged the validity of Celanese's patents for the calorie-free sweetener Ace-K (acesulfame potassium).

The decision marks a key interpretation of the 'on-sale bar' in patent law, declaring that Celanese's patents are invalid because the company had begun selling Ace-K before filing for the patents.

This principle—established in patent

law since the early 19th century—requires inventions not to be sold or offered for sale more than a year before the patent application.

Celanese, a major player in chemicals and materials, appealed an ITC decision after the commission found that Celanese's patents were invalid due to the on-sale-bar provision.

The ITC had dismissed Celanese's case against about 20 competitors, including Anhui Jinhe Industrial, which was accused of importing sweeteners that allegedly violated Celanese's patents.

The ruling affirmed the ITC's earlier decision and concluded ongoing litigation involving Celanese's patent claims.

Additionally, a related patent case in California federal court, which had been on

hold since 2021, was waiting for the Federal Circuit's final decision on the ITC's findings.

Celanese claimed that Anhui Jinhe Industrial and Jinhe USA violated its patents by importing Ace-K. The case involved three patents: US patent numbers 10,023,546; 10,208,004; and 10,590,095, all with an effective filing date of September 21, 2016.

The issue was whether the on-sale bar in the America Invents Act (AIA) of 2011 should invalidate patents based on sales of products made with a patented process before the patent's filing date.

Celanese argued that its pre-AIA sales of Ace-K, made with the patented process but not disclosed, should not count under the AIA's updated rules.



The ITC, following the Administrative Law Judge's (ALJ) decision, ruled that Celanese's patent claims were invalid. The ALJ based this on the Supreme Court's *Helsinn Healthcare v Teva Pharmaceuticals* decision, which confirmed that the AIA did not change the on-sale bar's scope.

According to Helsinn, the AIA upheld the previous interpretation of the on-sale bar, which includes sales of products made with a secret process.

The ALJ determined that Celanese's pre-critical date sales of Ace-K, made with the patented process, triggered the on-sale bar.

The ALJ dismissed Celanese's argument that changes in the AIA, such as replacing "invention" with "claimed invention", had altered how the on-sale bar should be applied.

But in its most recent appeal, Celanese argued that these changes mean that the on-sale bar should now require the claimed invention's details to be publicly disclosed.

However, the Federal Circuit disagreed, as these changes are updates in terminology rather than a fundamental change in law.

The Federal Circuit, in a decision authored by Judge Jimmie Reyna, affirmed the ITC's ruling. The court supported the ALJ's view that

the AIA did not alter the established rules on the on-sale bar.

While Celanese's arguments about changes in the AIA's wording and legislative history were considered, they did not convince the court to overturn existing precedent.

The court's decision focused on whether Celanese's prior secret sales of the sweetener Ace-K activated the on-sale bar. It affirmed that sales before filing a patent can invalidate subsequent patents, maintaining that patents cannot be granted for inventions sold secretly before the application date. ●

## ● SINGAPORE

# IP Week in Singapore slings the business of intangible assets closer to the mainstream

Singapore hosted one of Asia's biggest IP events in late August at the country's IP Week @ SG 2024.

More than 4,000 participants from over 40 countries converged at the Marina Bay Sands Expo and Convention Centre to hear seminars that catered for delegates from both the business and legal communities.

Explaining the challenge faced by IP agencies, Rena Lee, chief executive of the IP Office of Singapore (IPOS), said: "New technologies have emerged, especially in the areas of artificial intelligence, data management and sustainability.

"We need to keep pace with these advances. And it is only by having an innovative mindset that we can keep abreast of the progress of our stakeholders and remain relevant to serve the needs of our economies."

With a reputation as one of the world's most entrepreneurial offices, IPOS' agenda focused on intangible asset value, with sessions on financing and valuation with professional bodies more familiar with the worlds of M&A or accounting.

Last year, Singapore launched an Intangibles Disclosure Framework aimed at helping business enterprises to disclose and communicate the value of their intangible assets.

Murli Ravi, co-founder of Singapore-based venture capital firm Tin Men Capital, said he was "impressed and surprised" by the number and diversity of people attending.

"It was not only IP lawyers and IP consultants. I also met owners of small businesses, operational/commercial staff from multinationals, and even 16-year-old students. Similarly, the conference successfully attracted attendees not only from Singapore and the surrounding region but from places as far away as Canada. It was good to exchange views with such a wide range of people."

Annabelle Bennett, consultant barrister



IMAGE: SHUTTERSTOCK / MAJONIT

(senior counsel) and mediator/arbitrator remarked on how the event has changed since it was launched 12 years ago.

"Now you have thousands of people coming from all over the world and some of the broadest issues and applications of IP being discussed," said Bennett. "It's fascinating to see how the country has positioned itself as a knowledge and practice hub."

Other seminars included two moderated by WIPR editor Tom Phillips on startups and AI.

*The Startup IP Playbook: What Every Founder Should Know* featured panellists from different levels of the startup scene, including representatives from a venture capital investor, an accelerator, a tech transfer expert and two startup founders.

One of the busiest sessions was *The Crossroads of IP: Man or Machine in the Age of AI?*

David Kappos—co-chair of the IP Practice at Cravath, Swaine & Moore—joined professor Simon Chesterman (National University of Singapore), Hee-Eun Kim (Meta), Max Sills (counsel for Midjourney) and Denise Wong (IMDA) for an animated discussion on AI and IP.

Elsewhere, delegates heard sessions on alternative dispute resolution, disruptive technologies, and the economics of IP.

Notable speakers included the World Intellectual Property Organization's director general Daren Tang and chief economist Carsten Fink; judges Klaus Grabinski (president of the Court of Appeal and chairperson of the Presidium of the Unified Patent Court) and Justice Colin Birss; and Alan Fan, VP and head of the IP Rights Department at Huawei. ●

● UNITED STATES

## Revlon says staff 'stole' trade secrets for Britney Spears perfume deal

Revlon has accused a number of former employees of stealing its trade secrets in order to take a lucrative licensing deal for Britney Spears-branded perfumes to a new competitor in the market.

In a New York federal court lawsuit, the cosmetics and beauty brand said that Give Back Beauty (GBB) had made a "carefully planned and executed grab" for its fragrance business by misusing Revlon's trade secrets—gained from its former employees—to win the contract for a Britney Spears perfume line.

Revlon and its subsidiary Elizabeth Arden sold more than 40 fragrances using marks associated with pop star Britney Spears throughout a 20-year relationship with Britney Brands, including 'Curious', 'Fantasy' and 'Believe'.

The deal was renewed and extended at five-year intervals, and Revlon had

a dedicated team of Elizabeth Arden employees working on the partnership—which the company said had access to trade secrets related to the fragrances.

Revlon told the court that the contract was up for renewal at the end of 2024, and that by early March of this year Elizabeth Arden had completed negotiations with Britney Brands for an extension, with the only remaining detail for completion in April being Spears' signature.

However, Revlon alleged that without its knowledge, the team of employees that had negotiated the new contract was moving to GBB and were "intent on taking the Britney Brands relationship with them".

These employees "began decamping" to the competitor in May 2024, according to the suit—the same month that Britney Brands declined to sign the finalised extension agreement.

Revlon said that it and Elizabeth Arden "were completely unaware that Revlon's own team was actively sabotaging one of their most valuable licensing relationships".

The beauty brand told the court that Britney Brands subsequently signed a deal with GBB at "unprecedented" speed, which could not have been accomplished without its former employees' knowledge of proprietary information about the relationship.

Revlon stressed the high level of competition in the fragrance business, noting that "competitors to Elizabeth Arden would consider it a tremendous coup to take the Britney Brands business from Revlon".

The lawsuit alleges trade secrets misappropriation; tortious interference with prospective economic advantage; breach of contract; breach of the duty

● EUROPE

## Most active firms at UPC revealed

The law firms handling the most work at the Unified Patent Court (UPC) have been revealed in a report, which examines activity at the court in its first year of opening.

Bardehle Pagenberg, Kather Augenstein and Taylor Wessing emerged as the top three plaintiff representatives, accounting for 13.3%, 12.6% and 9.1% of all infringement cases filed before the UPC respectively from June 1, 2023 to May 31, 2024.

Munich-based Bardehle Pagenberg represented 10x Genomics in proceedings at the UPC against NanoString, as well as Amgen in its UPC infringement action against Sanofi.

According to Clarivate's report—One Year Later in the UPC: First Insights from Dart-ip—the top ten most active law firms handled more than two thirds (71.3%) of the total cases filed before the court.

Closing out the top ten law firms were Simmons & Simmons, McDermott Will & Emery, Hoyng Rokh Monegier, Bird & Bird, Arnold Ruess, Linklaters, and Freshfields Bruckhaus Deringer.

The report noted two major concerns raised by practitioners before the launch of the UPC and whether any of the decisions in its inaugural year had addressed them.

Firstly, whether the court would separate the issues of infringement and validity. On

this point, the report said that UPC judges had appeared to agree that the two matters should be addressed simultaneously, and there was no current indication that they would commonly be divided.

Secondly, practitioners expressed concerns that the court might unhesitatingly grant ex-parte preliminary injunctions.

According to the report, although decisions were based on specific circumstances, the court had issued preliminary injunctions on an ex-parte basis notably because "the opposing party has not been able to present

cases showed at least one plaintiff based in the country.

However, Japan's Panasonic was the most active plaintiff, followed by NJOY Netherlands and Abbott Diabetes Care from the US.

The activity of non-practising entities (NPEs) at the UPC increased after January this year, with NPEs filing 11% of the total number of infringement cases before the court by May 31.

Organisations based in the US also accounted for most of the top ten defendants, ranked by the number of patent infringement actions filed against them before UPC divisions.

China's Oppo and Xiaomi, Meril Life Sciences in India and Expert E-commerce in Germany were the only non-US based entities on the list.

Among 78 patents asserted before the UPC in 2023 within infringement cases, 45% were not asserted in another jurisdiction worldwide.

Regional UPC activity was concentrated heavily in Germany, with nearly 80% of all actions filed before UPC local divisions taking place in the country. This was led by the Munich local division, which saw 37.7% of all infringement cases filed before the UPC. ●

**“US-based entities dominated the list of plaintiffs filing the most infringement actions at the UPC.”**

the relevant prior art either in pre-litigation correspondence or in a protective letter filed by it", referencing the decision in *Ortovox Sportartikel v Mammüt Sports*.

US-based entities dominated the list of plaintiffs filing the most infringement actions at the UPC, accounting for six of the top ten, and a third of all infringement



of loyalty; and tortious interference with contract.

Revlon claimed that its former employees knew confidential information relating to its Britney fragrance business, including manufacturing resources, packaging sellers, and marketing and distribution plans.

The company said GBB had persuaded its employees to leave Elizabeth Arden, as well as falsely suggested to Britney Brands that Revlon was getting out of the fragrance business.

"This was obviously a carefully planned and executed grab by GBB for the Revlon fragrance business," the beauty brand alleged.

It said it had been made aware that GBB had contacted Elizabeth Arden's fragrance manufacturers, seeking release of confidential information concerning formulas, ingredients and production; and that a GBB entity in Switzerland had entered into a worldwide licensing agreement for fragrances bearing the Britney trademarks effective from January 1, 2025.

GBB states on its website that it is a privately owned beauty group, which engages in global partnerships, licensing

and distribution agreements with brands and talents to bring beauty products to consumers.

Revlon asked the court for relief including preliminary and permanent

injunctions requiring the return of its trade secrets, compensation and damages, and injunctions preventing its former employees from breaching their employment agreements. ●



IMAGE: SHUTTERSTOCK / CHASE DANIMULLS

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Artificial Intelligence



# ‘Paradise on Earth’: Hangzhou hosts AIPPI’s first China Congress

For the first time in its 127-year history, the AIPPI World Congress will be hosted in China. WIPR talks to the association’s Chinese Group leadership to find out more.

**F**or the first time in its 127-year history, the AIPPI World Congress 2024 will be hosted in China.

The event—which will take place in Hangzhou, in east China’s Zhejiang Province, south of Shanghai—is expected to welcome 2,000 delegates from more than 90 countries and regions.

Getting Hangzhou on the Congress map is a bit of a coup. It’s not that the association’s Chinese Group hadn’t tried to be chosen as a Congress venue—they were knocked back twice before getting third-time lucky with Hangzhou.

“It wasn’t that easy for us to get this opportunity to host the Congress in China,” says (Richard) Yi Li, secretary general of the AIPPI Chinese Group and senior adviser of CCPIT Patent & Trademark Law Office.

Li and Chuanhong Long, president of the AIPPI Chinese Group and president of CCPIT Patent & Trademark Law Office, reveal that they had previously put Beijing forward as a host city.

“Most IP professionals in China are from Beijing, so we thought if our foreign counterparts come to China, they will definitely come to Beijing,” says Li.

Not to be defeated, though, they decided to change tack and put Hangzhou forward—a move that proved successful.

## Heaven on Earth

It’s easy to see why Hangzhou was chosen. Known for its rich history and natural scenery, Li points out that it is also a “very internationalised city and very convenient to get here.”

“Many people may know Beijing or Shanghai, but maybe don’t know much about Hangzhou,” Long adds.

Hangzhou is a city with a mixture of natural beauty and history, with famous beauty spots such as West Lake. And it is a city with a long history, having been the capital of the ancient South Song Dynasty (1127–1279), which ruled the country during one of its cultural epochs.



“Many people may know Beijing or Shanghai, but maybe don’t know much about Hangzhou.”

Chuanhong Long,  
AIPPI, CCPIT

“There is an [old] saying in Chinese, that ‘high above the sky there is paradise, but here on the earth we have Suzhou and Hangzhou,’” remarks Long (上有天堂, 下有苏杭—Shang you tian tang, xia you su hang). “Hangzhou was considered a paradise on earth.”

Long adds that Hangzhou is renowned for its beautiful, high-quality silk and for its special green tea. “Longjin Tea [or dragon well tea] in Hangzhou is one of the most famous green tea species in the area,” he explains.

## A local experience

Long and Li have organised a special session to kick off the Congress—a real patent court trial.

This is not a mock trial, but a genuine patent infringement trial at the Hangzhou Intermediate People’s Court on the morning of Friday, October 18.

The **Opening Ceremony** and **Welcome Reception** will mark the official start of the Congress in the evening of Saturday, October 19.

On Sunday, October 20 is a special **Women in AIPPI** event that will take place at the China National Silk Museum, the largest in the world and a UNESCO heritage site.

The **Cultural Evening**, also on October 20, offers two options. Option 1 is ‘Enduring Memories of Hangzhou’, performed on West Lake in Hangzhou, which brings Chinese poetry, opera, music, dance, tai chi, tea ceremony and other traditional Chinese cultures to the audience.

Option 2 is the debut of ‘Elegance of Xianghu’, a large-scale digital show at Xianghu Lake, which weaves together the rich local cultural legacies. Performance elements include an adjustable water stage, fountains, portable visual platforms and drone formations.

## Speakers and sessions

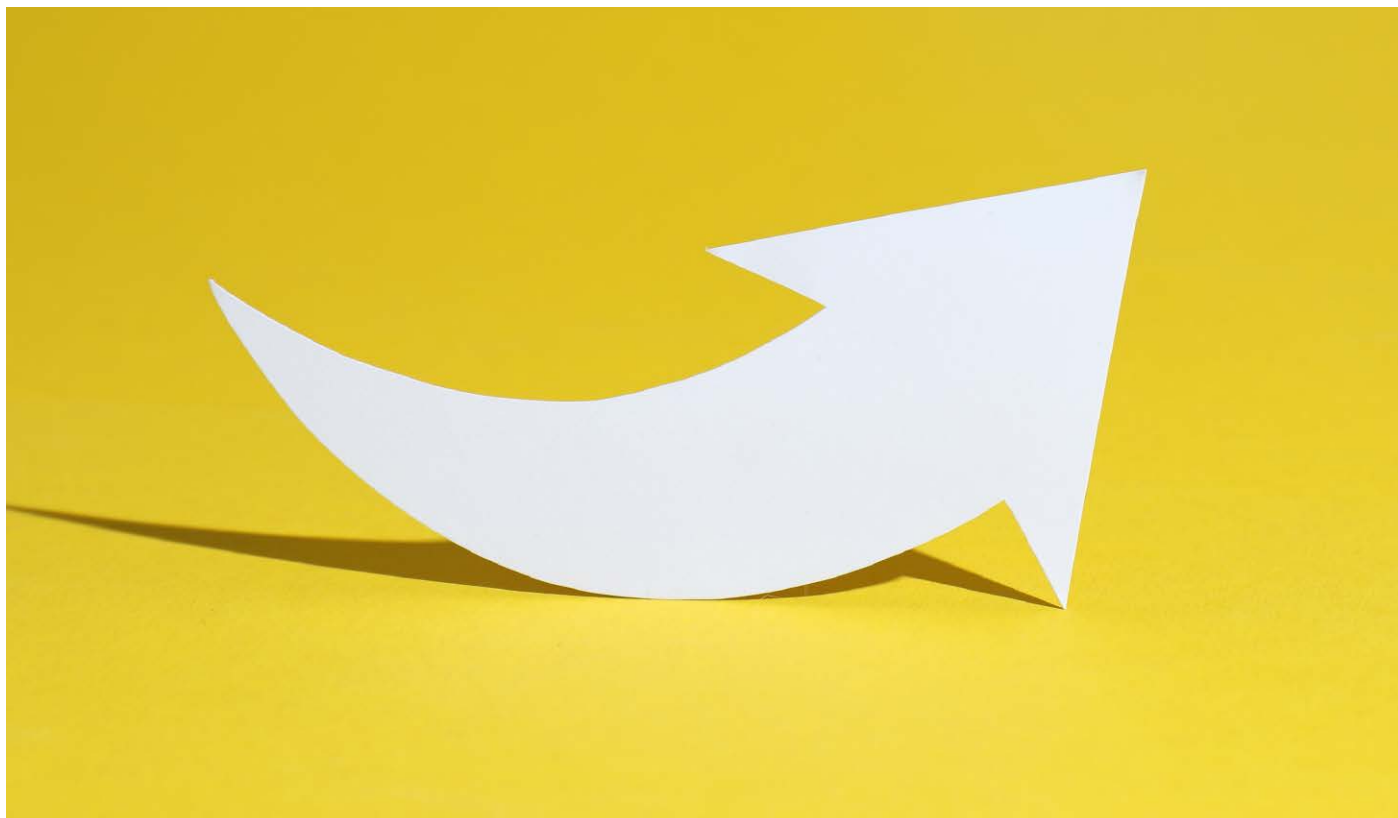
This year’s AIPPI Congress theme is ‘Balanced Protection of Intellectual Property and Innovative Development’.

As well as speakers from around the world, there will, of course, be many speakers from the Chinese Group who are involved in the panel discussions, explain Long and Li.

There are three particularly China-focused panel sessions. **IP Today: What’s new for IPR Examination and Protection in China** (Panel Session I) on Sunday October 20 will provide an update on administrative and judicial IPR protection mechanisms in China. **Takedowns & More: IP Battles in the Digital Worlds** (Panel Session IX, Monday 21) will include a discussion on how digital commercial platforms such as Amazon and China-based Alibaba deal with IP protection and infringement. On the final day, **Hot Pot of IP: China, Japan, Korea** (Panel Session XIV, Tuesday 22), will provide an update on recent and important IP reforms and decisions from China, Japan and Korea. ●

#AIPPIWorldCongress





# Nvidia's market surge: how a strong patent strategy led to dominance

The world's most valuable company has grown a patent portfolio that highlights its dominance of the tech market—but such success comes with its own set of challenges, finds Marisa Woutersen.

**N**vidia, the chip-making giant, has surged to the forefront of the global technology market, becoming the world's most valuable company after its share price reached a record high in June this year. With a market valuation of \$3.09 trillion, Nvidia has overshadowed tech giants such as Microsoft and Apple.

However, success of this scale comes with its own set of challenges. Nvidia now finds itself under increasing legal scrutiny, facing lawsuits from industry competitors such as Samsung, Lab Tech, and Modulus Financial Engineering. And most recently, from three authors—Abdi Nazemian, Brian Keene, and Stewart O'Nan—who accused the company of unlawfully using copyrighted materials to train its AI models.

“**Nvidia's position at the forefront of the technology sector is significantly influenced by its robust patent portfolio.**”

## Game-changing platform

Nvidia's ascent began in 1993, focusing initially on revolutionising computer graphics. The introduction of CUDA (Compute Unified Device Architecture) in 2006 was a turning point, allowing Nvidia's GPUs (graphics processing units) to be used for a wide range of applications beyond graphics.

This paved the way for Nvidia's leadership in artificial intelligence (AI), with its Hopper microarchitecture now powering key innovations such as OpenAI and ChatGPT.

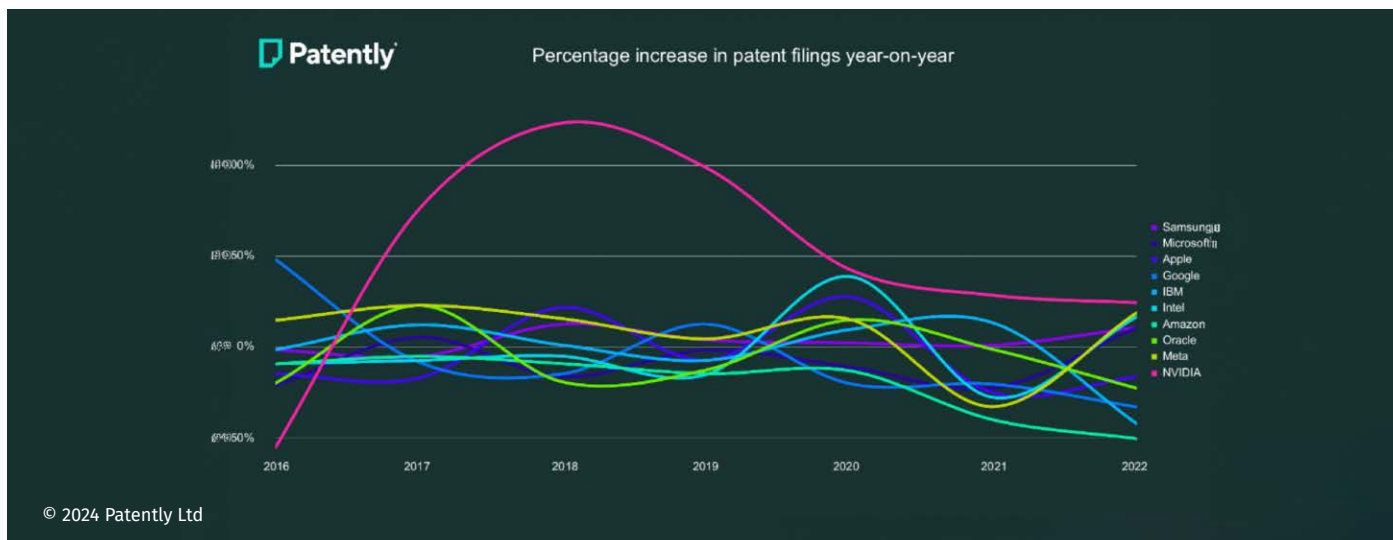
But as Nvidia's influence grows, so does the complexity of the challenges it must handle to maintain its leading position in the tech industry. The semiconductor industry is currently navigating the rapid growth of AI, with rising demand for specialised chips—particularly those from Nvidia. This AI increase has intensified competition, with giants like Intel and Google, along with startups, entering the market.

## Patent activity ramps up

Nvidia's patent portfolio reflects its growth and strategic focus. Isi Caulder, partner at Bereskin & Parr, notes that Nvidia's patent filings align well with the rapid advancement of AI technology over recent years.

“Before 2018, Nvidia had just one patent in IPC class G06N3, related to biological computing models,” Caulder explains. “Since then, Nvidia has filed more patents in this category than any other, marking [its] entry into neural network computing models.”

The 2014 *Alice v CLS Bank* Supreme Court ruling initially reduced software patent filings, but a more



favourable legal environment has since led to an uptick in patenting activity.

This shift is evident in Nvidia's increased US patent filings starting in 2017, which now surpass filings in other jurisdictions.

### Competitive edge

Nvidia's position at the forefront of the technology sector is significantly influenced by its robust patent portfolio. Among these, several patents and patent families are crucial, shaping Nvidia's advancements and competitive edge in the industry.

According to David Webb, senior associate at Herbert Smith Freehills, it is clear that patents which focus on innovations in the AI/machine learning space are of huge importance.

"The most valuable patents will be those that protect a fundamental invention which moves chip technology forward generally, rather than those specifically limited to how Nvidia designs its chips," he adds.

Eunice Wu, partner at Beijing Merits & Tree Law Offices, further explains that CUDA is crucial for Nvidia's expansion into scientific computing and



“Some analysts think that Nvidia might be overvalued, driven largely by AI demand, which might be described as a bubble.”

”

Andrew Thompson,  
EIP

AI. "CUDA is a foundational technology, enabling Nvidia's GPUs to be leveraged beyond graphics into areas like machine learning and AI," Wu says.

"The CUDA platform and its related technologies are likely to be protected by a significant number of patents, which are crucial for Nvidia's competitive advantage," she notes.

Nvidia's GPU architectures, including Ampere, Hopper, and Blackwell, are "essential" for its technological leadership. Additionally, Nvidia's advancements in AI and machine learning are supported by a suite of patents covering technologies such as neural networks and Tensor Cores, which are critical.

"These technologies are at the heart of Nvidia's data centre business, which has become a significant revenue driver for the company," explains Wu.

### A surge in patent filings

Nvidia's patent filings have surged notably, especially between 2017 and 2018. This competitive dynamic drives both innovation and an influx of patent claims. Wu observes that Nvidia's patent strategy emphasises both quality and quantity, showing a

### Patently

Company name	In force patents	Pending applications	Total live assets
Samsung	205,524	84,276	289,800
Microsoft	75,654	13,088	88,742
Apple	62,521	17,868	80,389
Google	60,275	13,709	73,984
IBM	57,917	13,610	71,527
Intel	46,623	20,797	67,420
Amazon	23,046	1,473	24,519
Oracle	17,471	2,504	19,975
Meta	13,684	4,910	18,594
<b>NVIDIA</b>	<b>6,115</b>	<b>4,142</b>	<b>10,257</b>

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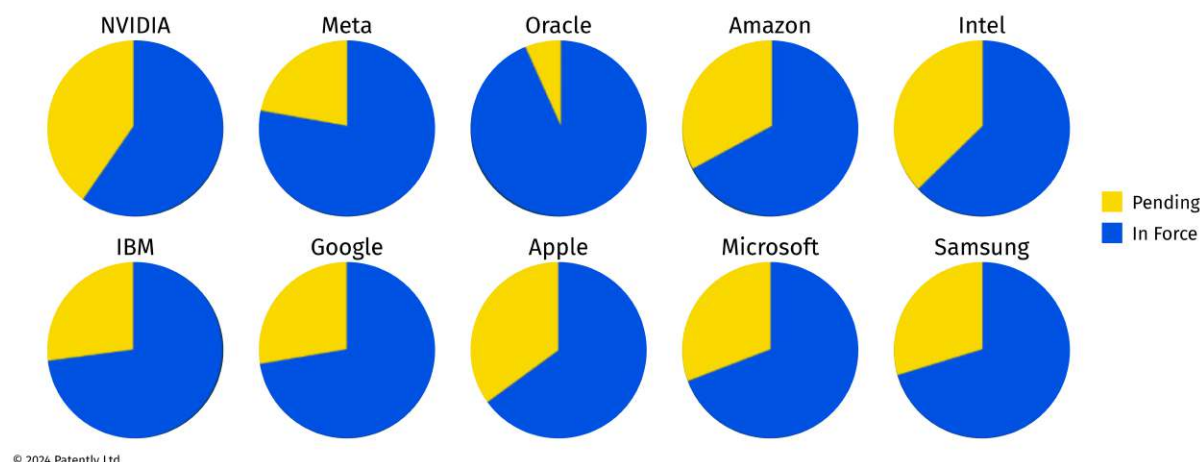
### Patently

Company name	In force patents	Pending applications	Total live assets
Qualcomm	118,063	43,879	161,942
TSMC	49,647	18,992	68,639
Intel	46,623	20,799	67,422
Micron	27,349	7,805	35,154
Applied Materials	19,022	11,324	30,346
SK Hynix	15,802	8,526	24,328
ASML	11,497	5,633	17,130
Broadcom/Avago	12,845	925	13,770
<b>NVIDIA</b>	<b>6,115</b>	<b>4,142</b>	<b>10,257</b>
AMD	5,490	2,322	7,812

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### Chip manufacturers current patent portfolio status



consistent increase in filings annually, unlike other big tech companies.

This “suggests a strong commitment to innovation and a proactive approach to securing IP rights”, she argues.

More patents can also be used to impede smaller competitors and license to larger firms, potentially setting an ‘Nvidia standard’ in the market.

Andrew Thompson, partner at EIP, notes that AI-specific cases are currently of high value, but “as the AI craze calms down—assuming it does—those may become relatively less valuable”.

“Nvidia will likely need to focus on growth areas outside AI, like in data centres, robotics and automotive, and ensure they develop application specific IP in these areas,” says Thompson.

#### Unpacking a smaller sized portfolio

Currently, Nvidia’s patent portfolio is significantly smaller compared with its two closest competitors, Intel and AMD. Intel holds around 65,900 patents, AMD approximately 19,500, while Nvidia’s portfolio comprises about 7,351.

Regardless of this disparity, Nvidia has demonstrated impressive growth in patent filings, with its portfolio expanding at more than twice the rate of its competitors from 2017 to 2019, explains Caulder. As of 2022, Nvidia’s patent growth aligns with other major corporations and competitors, she adds.

Webb points out that while Nvidia’s portfolio may appear smaller, “comparing the strength of a portfolio purely through patent counting doesn’t take into account the relevance of a particular technology or the strength/inventiveness of any particular patent family.”

Nvidia’s business is also more focused than many of the competitors listed.

“It is highly specialised in building a particular class of chips for a fairly specialised set of applications and presumably most or all of its portfolio is directed to that,” says Webb.



“**The CUDA platform and its related technologies are likely to be protected by a significant number of patents, which are crucial for Nvidia’s competitive advantage.**”

“  
Eunice Wu,  
Beijing Merits &  
Tree Law Offices

“Contrast that with companies like Samsung, Microsoft, Apple or Google, which have hugely varied businesses encompassing a wide range of technology areas.” Webb argues it would be “odd” if Nvidia had a patent portfolio of a similar scale to these kinds of companies.

Thompson echoes Webb, adding that despite Nvidia’s value, the narrower product offering would suggest it should have a smaller portfolio than companies like Samsung and Apple. However, given Nvidia’s valuation, its portfolio does seem underweight compared with the other big tech companies, according to Thompson.

“Some analysts think that Nvidia might be overvalued, driven largely by AI demand, which might be described as a bubble,” he says. “This might be factored in when considering how underweight the patent portfolio is.” AMD most likely has the most similar product portfolio, and Nvidia is ahead in terms of portfolio size and growth, adds Thompson.

#### Nvidia’s pending applications

Webb notes it is interesting to see that a greater share of Nvidia’s portfolio is made up of pending applications. “This is a positive sign that Nvidia is actively patenting its newest developments and is consistent with the rapid acceleration in innovation it has seen in recent years.

“No doubt Nvidia has aligned its filing strategy with its most valuable technology and has sought to protect its key IP,” he suggests. Thompson highlights that Nvidia’s pending applications shows that the software company is trying to grow its portfolio significantly. Overall, Nvidia’s year-on-year growth in patent filings has followed its growth in value.

“Nvidia not only improves existing technologies but also continuously explores new technological fields, and the sustained innovation and growth is a key factor for Nvidia’s leadership and competitive advantages,” concludes Wu. ●





## The AI revolution is coming for artists—laws need to catch up

A US bill that identifies ‘digital replicas’ and protects creatives is essential, argues Judge Kathleen O’Malley (retired).

**I**n 2016, moviegoers enjoyed a nostalgia trip when they sat down for *Rogue One: A Star Wars Story*.

Set as a prequel to the first Star Wars film, *A New Hope*, the movie’s cast included a familiar face: Peter Cushing. Nearly 50 years after he first portrayed Grand Moff Tarkin—the ruthless Death Star commander who orders the destruction of Princess Leia’s home planet, Alderaan—Cushing reprised his role.

But Disney faced a considerable challenge getting Cushing to return to Star Wars because he died in 1994, more than 20 years before production of *Rogue One* began. So a team of visual artists painstakingly scanned footage of Cushing, crafting a digital replica of the actor that captured his likeness with eerie precision. What viewers saw on the silver screen was a computer-generated Lazarus, resurrected from a long time ago in a galaxy far, far away.

Since *Rogue One*, technology that replicates voice and likeness has advanced at a breakneck pace, thanks largely to developments in artificial intelligence. But while Cushing’s estate had given Disney permission to use his face and voice, other artists and performers—in film, music, and visual arts—are increasingly seeing their own images reproduced without consent.

### Grave threat to livelihoods

Our IP system needs to catch up to this new era of



Judge Kathleen O’Malley  
(Retired)

technological and creative expression. The value of the AI-generated content market in music, film, and visual arts is set to surge into the billions by 2028. Without legal protections that guarantee every individual ownership over their voice and likeness, artists could see their livelihoods gravely threatened.

That is why the recent introduction of the Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES) Act of 2023 is so crucial. This bipartisan bill aims to protect individuals’ voices and visual likenesses from unauthorised AI-generated replicas. As a former federal judge with extensive experience in intellectual property law, I believe this legislation is essential to safeguard individual rights and creative integrity.

The NO FAKES Act would create a new federal property right—a ‘digital replication right’—allowing individuals to authorise the use of their voice or visual likeness, or not, as they see fit.

This right exists during an individual’s lifetime and also continues for 70 years after death, ensuring that an artist’s legacy and the economic interests of their heirs are protected long after their passing.

The Act establishes a registration system maintained by the US Copyright Office, providing a clear mechanism for managing these rights.

### First Amendment balance

Crucially, the bill strikes a careful balance with First



Amendment concerns. It includes exceptions for protected speech, such as commentary and parody. This approach aims to curb misuse while preserving the potential for beneficial applications of AI technology in the creative fields.

From a legal perspective, the NO FAKES Act addresses several key shortcomings in our current system. Today's state laws on publicity rights form a haphazard patchwork, with some offering robust protections and others none at all. This inconsistency leaves many individuals vulnerable and creates confusion for content creators operating across state lines.

Existing federal laws, such as the Lanham Act and the Copyright Act, are also too narrowly drawn to fully address the potential harm from today's sophisticated digital replicas. The Lanham Act primarily focuses on false advertising and other forms of commercial deception, which may not always be applicable to AI-generated art. The Copyright Act, while protecting original works, does not extend to an individual's likeness or voice itself.

These laws were crafted for an analogue era and they are insufficient to address today's digital realities. The NO FAKES Act solves these problems by establishing a uniform federal standard for digital replicas—without nullifying stronger state-level protections.

It holds individuals and platforms liable for producing or hosting unauthorised digital replicas,

“

**True innovation does not come from stealing someone else's voice or likeness; it comes from original thought, talent, and expression.**

”

with damages ranging from \$5,000 to \$25,000 per violation. Courts can also award punitive damages.

### Music industry risks

The Act recognises and addresses the unique challenges faced by the music industry. It allows both musical artists and those with exclusive contracts for their services or for distributing their works to take legal action against unauthorised replicas.

This provision is crucial in an era where AI-generated music is becoming increasingly sophisticated and prevalent. Consider the recent case of the song *Heart on My Sleeve* which was created with AI-generated imitations of rapper Drake and pop star The Weeknd. It garnered hundreds of thousands of hits on Spotify, YouTube, and other streaming platforms before it was taken down.

Incidents like these have prompted more than 200 musicians—from Aerosmith to the Jonas Brothers—to sign an open letter urging tech platforms and AI developers to respect the rights of human artists. The public is also on their side; recent surveys reveal that three-quarters of music fans oppose unrestricted AI-generated artist impersonations.

But it is small artists who stand to gain the most from the NO FAKES Act. The bill's protections are vital for less-established performers who lack the time and resources to hire lawyers who can navigate ambiguous legal terrain. Under the status quo, an aspiring musician's voice could be used to perform songs they never recorded, or a young actor's likeness could appear in films they never agreed to make—with neither receiving compensation.

### An act for the digital age

Some critics argue that this bill could stifle innovation or limit creative expression. But that view misunderstands both the nature of creativity and the purpose of intellectual property rights. True innovation does not come from stealing someone else's voice or likeness; it comes from original thought, talent, and expression.

The NO FAKES Act does not aim to stop AI development or creative uses of technology. Instead, it seeks to ensure that these advancements respect the rights and dignity of the individuals whose talents and identities are being leveraged.

The AI revolution is not just coming; it is here. And with it comes a fundamental challenge to how we understand and protect intellectual property rights. The NO FAKES Act would preserve the incentives that drive creative expression—while ensuring that, in the digital age, our identities, our art, and our innovations remain inviolably our own. ●

*Judge Kathleen O'Malley (ret) served on the US Court of Appeals for the Federal Circuit from 2010 to 2022 and the US District Court for the Northern District of Ohio from 1994 to 2010. She is a board member of the Council for Innovation Promotion.*



## Non-competes: the FTC 'used a sledgehammer instead of a chisel'

**A Texas district court has blocked a controversial rule that would have seen non-compete agreements for approximately 30 million workers banned nationwide. Marisa Woutersen reports.**

**I**n August, a Texas district court granted a summary judgment in favour of the US Chamber of Commerce and Texas-based tax firm Ryan, which had sued to block a ban on non-compete agreements.

In April 2024, the Federal Trade Commission (FTC) issued a final rule that aimed to ban employers from imposing a clause on workers that many say has deterred acts of trade secrets theft. The US Chamber of Commerce criticised the US Federal Trade Commission's (FTC) ban, arguing it was "unlawful" and a "blatant power grab that will undermine American businesses' ability to remain competitive".

A day after being formally adopted, the US Chamber of Commerce sued the FTC and its chair, Lina Khan. The plaintiffs included the US Chamber of Commerce, along with a coalition of business organisations.

They argued the FTC has never been granted the constitutional and statutory authority to write its own competition rules, and the ban set a "dangerous precedent for government micromanagement of businesses".

### Ban 'unreasonably broad'

US District Judge Ada Brown, who delivered the latest decision, said the rule is "arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation".



**“The Fifth Circuit could affirm on narrow grounds that the outright ban is arbitrary and capricious.”**

**”**  
*Debbie Berman,  
Jenner & Block*

The rule aimed to stop employers from entering into non-compete clauses with workers and required existing agreements to be cancelled by September 4, 2024.

Approved by a 3–2 vote, it was part of a broader effort by the FTC to prevent what it deemed “unfair methods of competition” under the FTC Act.

The ban had significant implications; the FTC estimated that approximately 30 million US workers were subject to such agreements.

### The court's decision

On July 3 this year, the Ryan court issued a preliminary injunction, temporarily blocking enforcement of the non-compete rule. However, that injunction only applied to the parties involved in the case. Now, the court has made a permanent decision that applies nationwide.

The court found that the FTC overstepped its legal authority under the FTC Act by trying to regulate non-compete agreements through rulemaking. It also said the FTC's actions were unreasonable, especially since states have traditionally handled non-competes through their own laws and court decisions. As a result, the court completely overturned the FTC's non-compete rule, preventing it from being enforced nationwide on its scheduled date.

The FTC has yet to announce whether it will appeal the decision. With this in mind, Willie Stroever, co-chair of the IP practice at Cole Schotz, advises businesses to make sure they have overlapping and alternate forms of trade secret protection. “It is also a good opportunity for businesses to revisit employee agreements containing their trade secret protections to see if they can be more narrowly tailored in case some form of non-compete ban returns,” he suggests.

Employers in states where non-compete agreements are restricted or banned must protect their IP and confidential information using other methods, such as non-disclosure agreements.

### 'This may not be the last word'

This decision is a major setback for the FTC and highlights the ongoing debate about whether the federal government should regulate employment practices that are usually managed by states.

Meanwhile, the business community has welcomed the decision, seeing it as a win for employers who want to use reasonable non-compete agreements to protect their business interests.

However, Debbie Berman, partner at Jenner & Block, cautions that this “may not be the last word”. The FTC will likely appeal, she says, though it faces a “substantial risk” in doing so. “Because the FTC used a sledgehammer instead of a chisel by failing to consider more limited restrictions on using non-competes, as well as by ignoring competing evidence of the benefits of non-competes, the Fifth Circuit could affirm on narrow grounds that the outright ban is arbitrary and capricious,” Berman explains. ●





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Mr. Feng graduated from Duke Law in the US and China Foreign Affairs University with LLM degrees. Mr. Feng is the Director of International Business Department and a Senior Partner of Tahota (Beijing) Law Firm, Head of Digital Economy Law Center of Tahota. Mr. Feng is a reputable IP and Data Law expert with substantial experience on intellectual property law, data law and anti-trust law with well-known international law firm and Chinese law firms, focusing on IP litigation, prosecution and enforcement, trademark and patent portfolio managements, as well as cyber and data law related legal matters. Mr. Feng has represented numerous foreign clients from US, EU, Japan, UK, Korea and ASEAN countries at various levels of courts as well as administrative organs in China. Mr. Feng is particularly experienced in addressing clients' commercial needs in the areas of IP litigation, arbitration and prosecution, including patent, copyright, trademark, and domain names, unfair competition, trade secrets. In addition to his work in the courtrooms, he has been involved in IP transactional work, including the drafting, negotiation and enforcement of IP assignment or licensing agreements. Besides, Mr. Feng and his team also represented a number of multinationals in dealing with their legal matters in relation to cyber security, privacy and data protection. One of cases handled by Mr. Feng was ranked as one of 50 Model IP Cases by Supreme People's Court of China in 2013. In 2019, a case handled by Mr. Feng acquire the first preliminary injunction on basis of trademark infringement and unfair competition from Shijingshan District Court in Beijing.

As a highly regarded expert at home and abroad, Mr. Feng is currently serving as the Consultant Expert to Guiding Case Research Center of Supreme People's Court of China, Vice Director of Copyright Society of China, Standing Committee Member of China Intellectual Property Law Association, Committee Member of TOPC (Trademark Office Practice Committee) of INTA. Committee Member of Unfair Competition and Antitrust Committee of Beijing Bar Association, an IP Expert for EU-China IPR Helpdesk as well as a member of American Bar Association, China Bar Association and INTA.

His professional experience includes working with the nonprofit Japanese government organization Japan External Trade Organization (JETRO), and top international and domestic law firms in China, Baker & McKenzie LLP, King & Wood Mallesons, Wan Hui Da Law Firm and East Concord Partners, which gave him valuable insights into the industry.

Mr. Feng actively participate events in IP society internationally and domestically. He is an influential IP expert in China. Mr. Feng is currently serving as the Consultant Expert to Guiding Case Research Center of Supreme People's Court of China; Vice Director of Copyright Society of China, a Standing Committee Member of China Intellectual Property Law Association, an IP Expert for EU-China IPR Helpdesk, a Trademark Office Practice Committee Head of INTA as well as a Committee Member of Unfair Competition and Anti-trust Committee of China Bar Association and a Member of Legal Committee of AmCham and American Bar Association.

The team led by Charles Feng consists of experienced lawyers and patent attorneys who are able to provide IP, Data Protection, Foreign investment and Dispute resolution related legal services in Chinese, English, Japanese and French.



## ‘Be prepared, and don’t assume at the UPC’: Chris Stothers

A vocal advocate of greater UPC transparency, Freshfields’ Christopher Stothers shares his views on the court’s journey so far, and why it is still so exciting.

**D**espite teething problems during its first year, the Unified Patent Court (UPC) is widely hailed as a success. With its high volumes of cases and proven ability to rapidly process and rule upon cross-border disputes, the venue has more than surpassed the initial expectations of many.

But what are the views of the patent attorneys in the vanguard of the court’s progress—the people making their mark at the venue? And their top tips for making a (good) first impression?

WIPR sat down with Christopher Stothers, partner at Freshfields, and one of the leading voices in the campaign to force the UPC to become more transparent and provide access to evidence.

### How would you describe the UPC’s progress as a litigation system?

The progress has been incredible in such a short time—the UPC has already established itself as a highly credible and strategically important jurisdiction when considering cross-border patent litigation, while still managing to cope with some SME cases.

Of course there are teething issues, but the new system has progressed far more quickly than many expected. The challenge is now for the UPC to keep that progress going as we get more substantive decisions and appeals, and as the caseload rises.



Christopher Stothers,  
Freshfields

“

**It is more cost-effective than traditional cross-border litigation across all the jurisdictions it covers, but that isn’t good enough to meet the ambitions of the court.**

”

### Is it meeting its goals of reducing litigation costs and increasing legal certainty?

Not yet! Too many procedural and substantive unknowns push up costs, which is not helped by the well-known challenges of the CMS (which the UPC is now tackling, but will take some time to address).

It is more cost-effective than traditional cross-border litigation across all the jurisdictions it covers, but that isn’t good enough to meet the ambitions of the court. As the case law builds up, costs should come down and more certainty will emerge.

### Can you name one aspect of the court’s process or procedure that it does particularly well?

The determination to make things work. I was very surprised early on to get an email directly from a presiding judge not only telling me that an order had been made on my transparency application but how to find it in the CMS.

The relationship between judges and litigators can be very different between jurisdictions, but the common determination to support the functioning of the UPC has driven a positive atmosphere which I hope can be maintained.

### What one thing would you like the court to change?

My views on transparency are well known—we’ve made some progress but there is further to go (decisions and orders are still being ‘published’ on LinkedIn long before they appear on the court’s website, and it is still very hard to find out information about pending cases unless orders are published on them).

But, more fundamentally, we need cases to be distributed better across all of the court’s geographical locations, which I realise is difficult to achieve given the jurisdictional rules currently in place.

### What tip would you give someone appearing before the court for the first time?

The same I’d give for any other court—be prepared. You are appearing before especially motivated judges who will have read the papers thoroughly and may have a very different perspective to that of your team which has been immersed in the case for months.

You may not be able to predict what that perspective will be but if you know the papers you can focus at the hearing on dealing with the issues as they are raised by the judges.

And once you are in the hearing, listen to the judges. You need to argue your client’s case, but if you don’t react to what the judges are telling you in the process then you are unlikely to persuade them that your client should win. Finally, it cannot be overstressed that this is a new, multinational court which draws on the best traditions from around the UPC contracting states—and beyond.

As is the case with any cross-border litigation, don’t assume that your own legal traditions will prevail—so work out how you can put together a team which can draw on a range of traditions. ●





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IMAGE: SHUTTERSTOCK / ANNE KOELEMAN

## ‘Masking only works for so long’: working with ADHD

Being a lawyer with ADHD is far from easy due to widespread misconceptions about the condition but there are ways to offer support, says Lisa Mueller of Casimir Jones.

What springs to mind when you think of the word ‘diversity’? For many, the word is a broad term that includes several factors and characteristics. Some of these are visible, such as age, gender, ethnicity, race/skin colour, and physical disabilities.

Others are invisible, eg, educational background, political views, religion, socioeconomic background, value systems, and—one of particular importance to me—neurodiversity.

### Brain differences

Neurodiversity refers to a group of neurodivergent individuals, and the term ‘neurodivergent’ is used to describe a person whose brain differences affect how his or her brain works.

I am neurodivergent—I have ADHD. You wouldn’t guess it by just looking at me because it’s not something you can see: it’s invisible.

Some might be wondering: “Isn’t ADHD something that just affects kids, typically boys?” No, that is a common misconception. Many adults have ADHD, and in fact, most don’t know they have it.

### Many misconceptions

Another common misconception is that ADHD is overdiagnosed. The truth is that while boys are often misdiagnosed with ADHD, girls and women are much more likely to be undiagnosed—with up to 75% of all girls who have the condition remaining undiagnosed.

I remained undiagnosed up until four years ago. If you are wondering whether I struggled in school



Lisa Mueller,  
Casimir Jones

“  
I am neurodivergent—I have ADHD. You wouldn’t guess it by just looking at me because it’s not something you can see: it’s invisible.  
”

or had disciplinary issues growing up, that’s another common misconception. And the answer is ‘no’.

There are a lot of misconceptions and stereotypes around ADHD, as there are about other types of neurodivergence. ADHD, like other types of neurodivergence, comprises a spectrum, with no two individuals experiencing the exact same symptoms.

As mentioned earlier, ADHD stands for attention deficit hyperactivity disorder—a terrible name, which isn’t helpful or even accurate. ADHD is not a deficit of attention—it can, in fact, produce a surplus of attention, particularly when an individual is interested in something, allowing us to become hyper focused on an event, task, or topic.

### Lawyers more likely to have ADHD

According to a recent study by the Journal of Attention Disorders, the prevalence of ADHD among lawyers is estimated to be around 8–25%, which is higher than the prevalence in the general population.

Being a lawyer with ADHD is not only challenging but isolating because of the widespread misconceptions, shame, and stigma associated with the condition.

Additionally, studies have shown that over time, the pressure of being an attorney can exacerbate ADHD symptoms causing individuals to struggle with tasks that aren’t urgent or intellectually stimulating, such as logging-in time or reviewing pre-bills.

What can you do to help your colleagues with ADHD in your firms and corporations? You can be an ally. Work to create a culture where your colleagues with ADHD feel welcome and included and take the time to work with them to help them be successful at their jobs. Examples of how you can be an ally include:

- When conducting a meeting that includes ADHD colleagues, make certain to schedule periodic breaks. Long meetings are extremely challenging for individuals with ADHD. The longer the meeting, the more likely an individual with ADHD will become distracted and/or have trouble sitting still.
- Schedule meetings in rooms that encourage movement or standing. Consider eliminating laptops and/or cell phones to reduce the number of distractions and/or to ensure that interruptions are minimised.
- When working with ADHD colleagues on deadline-driven projects, set milestones and check in with your colleagues to make certain they are focused on relevant deadlines. Consider repeating calendar reminders to help reinforce deadline dates.
- Suggest note-taking to remember tasks and to stay engaged, and provide distraction-free work areas. Encourage your ADHD colleagues to request any necessary accommodations such as noise-cancelling headphones and/or timers to avoid distractions. ●

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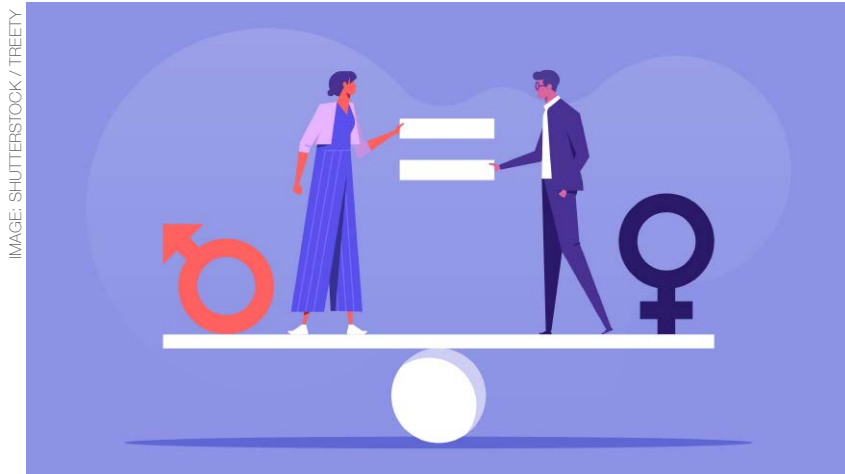


IMAGE: SHUTTERSTOCK / TREETY

# Trademarks and gender: the true picture

A report co-authored by WIPR has revealed key insights into gender parity among trademark professionals.

Advances have been made in achieving gender equity in the trademark profession, but the industry has a considerable way to go before achieving parity, according to a new report by the International Trademark Association (INTA) and WIPR.

*Shattering Systemic Barriers: How to Advance Gender Diversity in the Intellectual Property Profession* uncovers insights into the gender-based experiences of trademark practitioners around the world, and analyses efforts to improve the situation for women with the goal of promoting effective initiatives.

WIPR's deputy group editor Muireann Bolger and INTA senior associate Helena Rother co-authored the report, which was based on a survey of nearly 1,000 respondents across 94 jurisdictions.

As well as collecting data on the number of women in the profession and initiatives to progress their careers, the survey was aimed at revealing what it is like to work as a woman in the trademark industry.

"Capturing the experiences of women is vital to achieving sustainable change," wrote Bolger and Rother in an introduction to the report.

"It is important to understand not only how many women are employed in the trademark sector but also what their day-to-day experiences are like.

"This report assesses and compares the career trajectories of men and women, and sheds light on

“Higher average annual gross salaries were observed for men than women, at \$260,577 for men and \$202,965 for women.”

biases that can hold women back and on the implicit and explicit sexism that persists in the industry.”

The study focuses on representation, career progression and work-life integration and also considers factors such as intersectionality—multiple forms of discrimination that may be experienced by a person simultaneously.

## Promising signs

Overall, the report showed that women are well represented in the trademark sector, and progress has been made on advancing female practitioners in the field.

The majority of respondents disagreed or strongly disagreed with the statement: “My office is a difficult place for women to work.”

According to the research, many women have reached the upper ranks of their firms, and 81% of respondents said they believed the workforce as a whole was supportive of advancing women, with 54% submitting that furthering the careers of women was a priority for their organisation.

There was praise for the networking opportunities available to women, and 27% of female respondents had taken control of their own working conditions by starting their own business.

## Imbalance remains

However, men were much more likely to take this step, with 41% of male respondents having set up on their own. The study reveals that substantial challenges persist for women, with many respondents reporting that they had witnessed or experienced implicit or overt bias against women in the workplace.

Of female respondents, 43% reported having seen women being accorded less respect than men in the past three years, and 30% had experienced this themselves.

A considerable proportion of female respondents (40%) said they had witnessed women labelled as “bossy” or “overbearing” when they were being assertive, and others cited “personality-oriented feedback” from superiors that men were less likely to receive.

Higher average annual gross salaries were observed for men than women, at \$260,577 for men and \$202,965 for women.

The report also highlighted issues for women of colour, with one respondent commenting that: “Black women and the particular biases we face (societal, professional or otherwise) are often overlooked.”

INTA CEO Etienne Sanz de Acedo said: “INTA is committed to advancing women in IP and reaching gender parity within our community. This starts with—and cannot be achieved without—reliable data.

“I call on everyone in the global IP community to take this report back to their organisations, to absorb the data, and join us in promoting this important cause,” he urged. ●



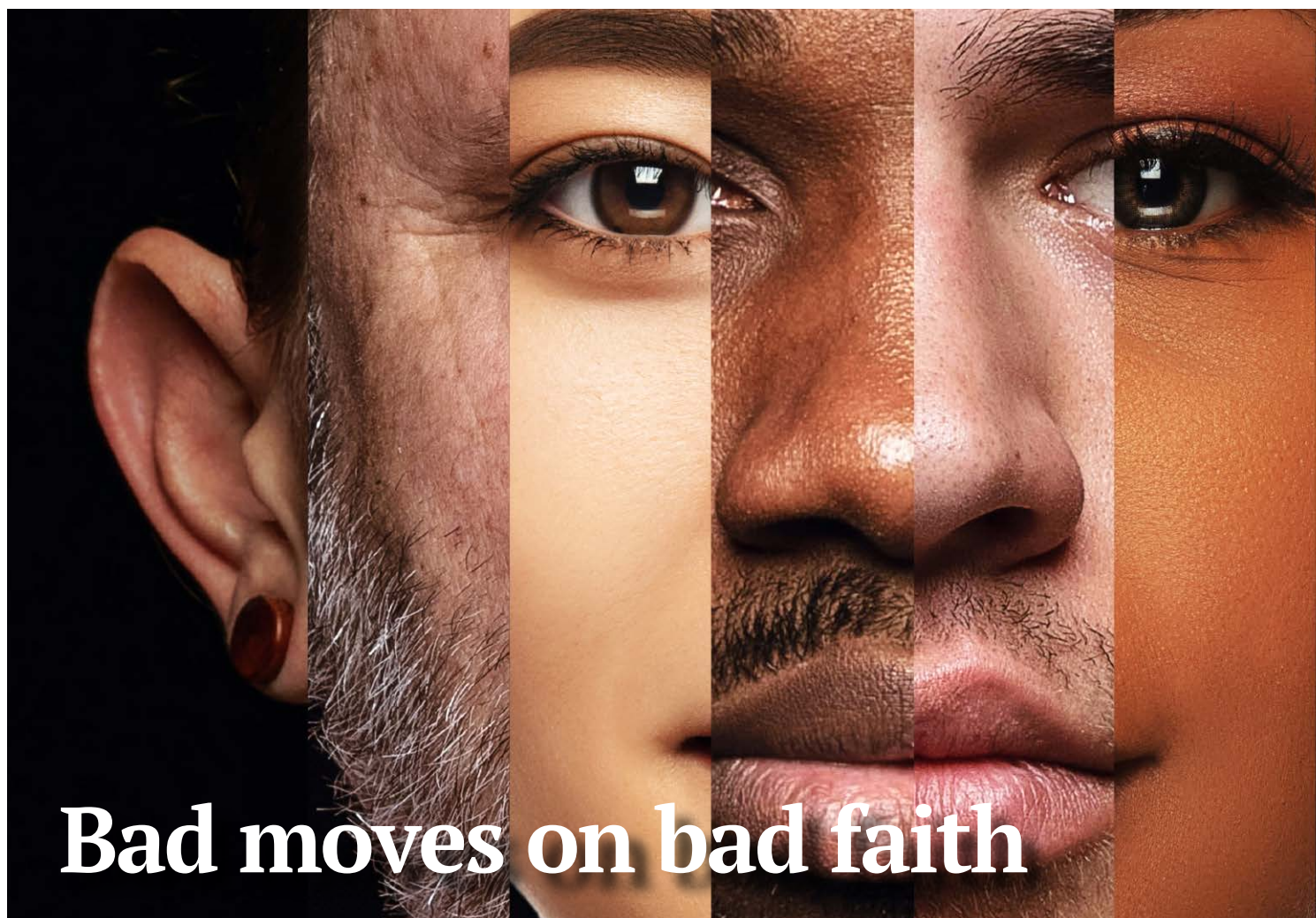


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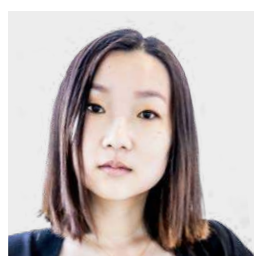


**As the USPTO and Amazon combat bad faith filings, some fear that US-based Chinese attorneys have become unwitting casualties, as Yan (Regina) Song of Aeon Law explains.**

**I** would like to speak to a white lawyer.” I was stunned. I never thought that in this day and age, practising law in the US, I would encounter clients who chose lawyers based on race. Yet, this is what I heard recently.

I am from mainland China, and I work as an IP attorney leading the trademark team at a boutique IP firm in Seattle, Washington. I started practising trademark law after the trademark rules issued by the US Patent and Trademark Office (USPTO) required the representation of US-licensed attorneys for foreign-domiciled applicants and registrants.

After the new rules came into effect, some Asian US-licensed attorneys chose to work with a few Chinese agencies by ‘renting’ their licences and filing a large amount of low-quality trademark applications with questionable specimens that were prepared in China, leading to a backlog at the USPTO. As a result, these



*Yan (Regina) Song,  
Aeon Law*

poor practices have created a stigma around Chinese IP attorneys in the US.

This reputation continues in the e-commerce industry, where trademark protection is extremely important. For instance, *Tiffany (NJ) v eBay* (2010) tells us that e-commerce platforms can be liable for trademark infringement conducted by their sellers. Moreover, e-commerce platforms have implemented strict rules to protect the trademark rights of their customers. Alibaba, one of the leading B2B online marketplaces, has implemented an IP protection platform where sellers and their agents can upload proof of trademark rights and report infringers.

Similarly, Amazon, the largest e-commerce platform, has a brand-protection programme called the Amazon Brand Registry. This programme has led to the development of an informal list of US-licensed attorneys to avoid when enrolling in the Amazon Brand Registry, and many attorneys on that list were



**“When questioned, Amazon denied the existence of such a list but admitted that its system indeed erroneously flagged some attorneys.”**

coincidentally Asian and sanctioned by the USPTO due to their misconduct, such as “renting” licences.

In my experience, these events have led some trademark applicants and registrants to purposefully seek US-licensed attorneys who are not on that list to handle their trademark portfolios before the USPTO. Does the USPTO or the Amazon Brand Registry intend to discriminate against Asian lawyers? I hardly think so. Their intention is to safeguard a fair and square marketplace through new rules. Am I somehow collateral damage in this effort, a US-licensed attorney in good standing who happens to be Chinese? Unfortunately, I believe so.

#### **New USPTO rules and Amazon’s Brand Registry**

Since August 3, 2019, the USPTO has required a US-licensed attorney to represent any applicant or registrant whose domicile is not within the US or its territories. This action is in response to inaccurate

and possibly fraudulent submissions that violate the Trademark Act and USPTO rules, including improper signatures and use claims.

Notably, the USPTO has experienced a considerable surge in trademark filings since 2020. In December 2020, the number of trademark applications increased 172% over December 2019. One reason, according to the USPTO, is the increase in e-commerce during the pandemic.

It is almost certain that the new rules and the recent surge benefited US-licensed attorneys.

However, some attorneys chose a more “profitable” route to maximise the advantage. In a Final Order issued in the Proceeding No. D2021-04, the USPTO found that US-licensed attorney A had a service agreement with Chinese trademark agency B based on the number of trademark application materials reviewed by A, including \$40 per application for A to review 30 applications or fewer per month, \$30 per application to review 31 to 100 applications per month, and \$20 per application for more than 100 applications per month.

Attorney A reviewed up to 500 applications per month and received up to \$10,000 per month from B. A did not communicate with B’s clients directly regarding their trademark applications, but it was always B preparing the applications and entering A’s signature on those applications.

A “renting” his US licence to the Chinese trademark agency caused him to be suspended from practice before the USPTO for three months. Moreover, A is a US attorney but is also Chinese.

#### **The mysterious ‘blacklist’**

Amazon’s Brand Registry is meant for sellers to protect their brands. To participate, one must have a pending or registered mark in the country where one wishes to enrol. Take the US as an example. One needs at least a pending US trademark application to enrol in the Amazon Brand Registry. For foreign-domiciled applicants, that means they may first file a trademark application represented by a US-licensed attorney, and then provide the trademark information to Amazon.

Once notified, Amazon will then send a verification code to the attorney of record for each mark that needs to be enrolled, and the attorney of record will send the verification code to their clients, the foreign-domiciled applicants, for submission to Amazon. After the verification code is provided to Amazon, the process is complete.

For Amazon sellers, enrolling in the Amazon Brand Registry is almost always a must (it’s not required by Amazon, but sellers usually choose to enrol); and for sellers that domicile outside the US, having a US-licensed attorney is typically a prerequisite to become eligible for the Amazon Brand Registry since they need to file their trademark application first. However, their journey can be bumpy if their US attorneys are on the ‘blacklist’.



As this mysterious ‘blacklist’ is allegedly from Amazon, if a seller’s attorney of record is on that list, the seller’s enrollment in the Brand Registry may be rejected. Thus, for successful enrollment, sellers must avoid any attorneys deemed untrustworthy by this ‘blacklist’. The version of this list I obtained listed 52 attorneys and law firms, the majority of which can be identified as Chinese attorneys or firms. This list also provided information about the sanctioned attorneys retrieved from the USPTO.

When questioned, Amazon denied the existence of such a list but admitted that its system indeed erroneously flagged some attorneys. Amazon’s answers have only left me with further questions. Did Amazon mistakenly flag US attorneys who have Chinese names? Is there a reason that Chinese attorneys are prone to USPTO sanctions and the Amazon blacklist?

### The role China’s IP system plays

While some legal experts express doubts about IP protection in China, others speak highly of China’s recent efforts. The US International Trade Administration has claimed that IP infringement and theft is widespread in China but the country has also taken steps to address this. China has not only set up a court system to enforce IP protection but also regulates its marketplace of IP service providers.

According to the statistics provided by the China National Intellectual Property Administration (CNIPA) in 2023, there are around 87,000 IP agencies, including 4,520 patent agencies and 71,466 trademark agencies. In early 2023, CNIPA requested trademark agencies to verify and resubmit their information for review, and by the end of March 2023, only 16,921 trademark agencies passed the review and were approved by CNIPA. Trademark agencies that failed the review can no longer sign and submit trademark applications.

Fewer competitors in the marketplace may mean less competition, but the reality is not friendly to Chinese lawyers. The CNIPA’s statistics demonstrate that the major factor in determining the pricing of IP services is competitors. To stand out from their competitors and receive the most clients, some Chinese trademark agencies found a cost-effective way: pay a small fee to a US-licensed attorney to use their name and bar number to file trademark applications in the US, which are fully prepared in China. Using this method, a US attorney can file more than 1,200 applications in two months, with almost more than 20 applications being filed per day. The cost is also much lower than a trademark application fully prepared and filed by a US-licensed attorney.

The logic is to use less of the US attorneys’ work to reduce the total cost. However, Chinese clients have no or limited knowledge about this arrangement; they believe the pricing for a US trademark application filed by a US attorney should cost the same.

If the US attorneys’ work cannot be diminished or replaced, another way to reduce the total cost is to pay

Chinese lawyers less. A Chinese IP lawyer once told me that he could not be compensated for handling the foreign patent work because his clients would rather pay for US attorneys, not Chinese lawyers. To receive clients, this Chinese lawyer finally agreed not to charge his service fees for handling foreign patent work. I was shocked that he willingly accepted unfair compensation for his time and efforts. Meanwhile, clients have no or limited knowledge about why someone would agree to this deal; they believe the pricing for a Chinese lawyer should always be discounted. This has perpetuated the problem.

### Impact on Chinese lawyers in the US

A profile of the legal profession in 2023 published by the American Bar Association tallied that 79% of all lawyers are white, confirming that white lawyers are still overrepresented in the legal field. Moreover, the percentage of Asian American lawyers has increased from 2.5% to 6% since 2021.

Chinese lawyers practise in a wide variety of legal areas in the US. Even though English may not be their first language, Chinese lawyers in the US go to law schools, take bar exams, and get licensed just as all lawyers do.

In China, clients are unwilling to compensate Chinese lawyers properly; in the US, clients are afraid that Chinese lawyers are not worth the value. This stereotype hurts everyone. In China, some IP lawyers and firms reduce their legal fees by sacrificing the quality of work or their own time due to the price competition and clients’ disrespect for their value.

This leads to low-quality trademark filings in the US, which severely disrupt the USPTO. To earn the money that may be lost due to these biases, some Chinese US-licensed attorneys choose to violate USPTO rules by “renting” their bar licences to those Chinese trademark agencies, causing entities such as the USPTO and Amazon Brand Registry to flag attorneys. These events combined have led to prejudice towards Chinese attorneys.

### Beating biases

The USPTO’s battle to combat low-quality trademark applications requires Chinese lawyers to properly educate and guide their clients to understand the value of their lawyers and IP. Furthermore, Chinese companies need Chinese lawyers who understand both US laws and Chinese culture to assist in the protection of their overseas IP.

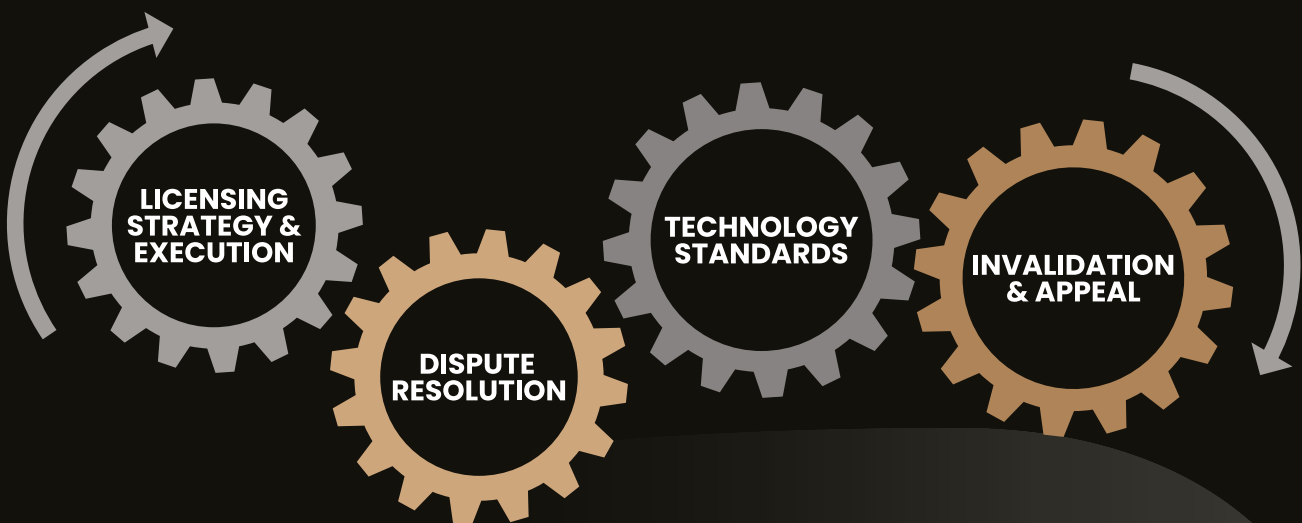
I hope that Chinese IP lawyers and legal professionals do not continue to be collateral damage in this fight and that clients learn to respect value, and treat them fairly. Their roles are essential to improving the IP environment in China, which is then beneficial to the US, and all countries that emphasise the value of IP. ●

*Yan (Regina) Song is an IP attorney at Aeon Law. She can be contacted at: [regina@aeonlaw.com](mailto:regina@aeonlaw.com)*

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**When In China, clients are unwilling to compensate Chinese lawyers properly; in the US, clients are afraid that Chinese lawyers are not worth the value**  
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# How specialisation transformed Brazil's patent system

**Dedicated IP courts and a heightened focus on patent law have transformed the handling of disputes in the country, say Abel Gomes and Liliane Roriz of Licks Attorneys.**

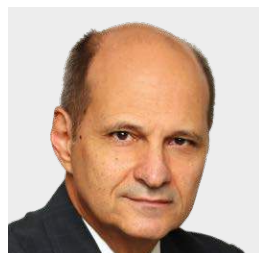
**B**razil, now among the world's top ten largest economies, owes part of its success to its utility patent system. This system plays a pivotal role in fostering investment in high-value sectors such as advanced technologies and innovative services, which rely heavily on strong legal protections for IP.

The roots of Brazil's current patent system can be traced back to 1994 when the country adopted the Stockholm Revision of the Paris Convention and the World Trade Organization TRIPS Agreement.

This integration into the international IP framework set the stage for the development of Brazil's patent system. The primary legal foundation is Federal Statute #9,279 of 1996, which establishes the rights and obligations related to industrial property, including utility patents.

While having a robust statute is essential, the effectiveness of the patent system depends significantly on its enforcement. This is where Brazil's judiciary has played a crucial role.

Since 1989, the Brazilian judiciary has been enhancing its specialisation in patent law, a move that has greatly improved the system's effectiveness. The judicial system's efforts have provided legal certainty for both local and international investors, facilitating access to cutting-edge products and services for the Brazilian population. This specialisation is pivotal



*Abel Gomes,  
Licks Attorneys*



*Liliane Roriz,  
Licks Attorneys*

in maintaining Brazil's reputation as a reliable jurisdiction for patent adjudication.

President Fernando Henrique Cardoso, during the signing of Federal Statute #9,279 in 1996, emphasised the transformative impact of patent legislation. He stated, "Let's share knowledge and transform the country, as we are doing, so it may truly become the master of its destiny." Nearly three decades later, the Brazilian patent system continues to support research, development, and industrial growth, significantly contributing to the nation's economic and social advancement.

## Two court system

Unlike countries such as the US or Germany, Brazil does not have a single specialised court exclusively for utility patent disputes. Instead, the Brazilian Constitution (Article 92) establishes a system of two independent, non-hierarchical courts. Both state and federal courts have jurisdiction over different patent disputes. This structure helps minimise public expenditure on specialised courts and reduces processing times while ensuring that Brazil remains a predictable and reasonable jurisdiction for patent matters.

Chief Justice Luís Roberto Barroso, in his 2023 inauguration speech, highlighted the productivity of Brazilian courts, noting that they handle



approximately 30 million cases annually. According to the National Council of Justice (CNJ), Brazilian courts had 81.4 million ongoing cases in 2023, with almost 80% of these cases in state courts. This high volume of cases demonstrates the judiciary's capacity to manage a broad array of legal matters, including patent disputes.

The Brazilian judicial system's approach to patent cases has been influenced by historical and constitutional developments. The "mixed bifurcated" system is employed, wherein state courts handle infringement and damages claims, while federal courts address patent validity and cases involving federal agencies. This approach ensures that all aspects of patent disputes are addressed effectively.

### Enhanced handling of patent cases

Specialisation within the judiciary has been a key factor in the effectiveness of Brazil's patent system. This began with the Rio de Janeiro Federal Court, which started dedicating some of its district courts to industrial property cases in 2000. This was formalised with Provision #15, which mandated the allocation of industrial property-related cases to specific district courts. The Federal Court of Appeals for the 2nd Circuit (TRF-2) also introduced specialised panels for IP cases in 2004, further enhancing the judicial handling of patent disputes.

The Brazilian Patent and Trademark Office (BRPTO), established in 1970, plays a central role in overseeing industrial property regulations. Its historical context, along with its predecessor, the Brazilian Patent and Trademark Department (BRPTD), explains why the Rio de Janeiro Federal Court became a pioneer in patent specialisation, back in September 2000. This court has become a leading institution in adjudicating patent disputes, managing a significant volume of such cases compared to other courts.

In 2022, the Federal Civil Courts of the Judiciary Section of the Federal District began specialising in patent cases. This new specialisation, still in its experimental phase (with a planned reevaluation in 2024), reflects the unique role of the Federal District as a national forum for federal agencies and the BRPTO.

State courts have also adopted specialisation in patent cases. The Rio de Janeiro State Court established its IP specialisation with Rule #19 in 2001. This court handles a significant number of patent infringement cases and is notable for its long-standing specialisation. Other State courts have followed suit. For example, São Paulo created regional business trial courts with exclusive jurisdiction over IP disputes. This separation addresses the high volume of cases and improves adjudication efficiency.

The São Paulo Court of Appeals has also established a Corporate Law Appellate Panel to handle IP appeals disputes. This panel is integrated into the Private Law

Section, which was previously focused on civil matters. The creation of this panel underscores the importance of specialised adjudication in handling complex IP cases.

Minas Gerais and Rio Grande do Sul have also developed specialised business courts to manage IP disputes. The Minas Gerais State Court, for instance, designated its business trial courts in Belo Horizonte for IP trials. Similarly, Rio Grande do Sul's regional business trial courts in Porto Alegre and other districts handle patent cases, reflecting a broader trend toward specialisation in the state courts.

### Effectiveness and challenges

The specialisation of courts in Brazil has led to significant improvements in the handling of patent cases. Specialised courts have demonstrated increased efficiency, predictability, and expertise in adjudicating complex patent disputes. This has been instrumental in maintaining the effectiveness of Brazil's utility patent system.

However, the system is not without its challenges. Critics sometimes argue that Brazilian judges lack specialisation or fail to thoroughly examine cases. Such criticisms, often based on misconceptions, seek to undermine the credibility of the judiciary. It is important to recognise that the judiciary's commitment to fair and timely adjudication is a cornerstone of Brazil's patent system.

Recent decisions by the Brazilian Superior Court of Justice (STJ) and the Supreme Federal Court (STF) have reinforced the system's effectiveness. These decisions reflect a consistent commitment to upholding justice and ensuring legal certainty in patent matters. Despite occasional criticisms, the judicial system has continued to demonstrate its capacity to handle patent disputes effectively.

In conclusion, Brazil's utility patent system, supported by a judiciary that balances specialisation with efficiency, has played a crucial role in the country's economic growth and technological advancement.

The judicial system's commitment to fair and effective adjudication continues to strengthen the patent framework, contributing to Brazil's status as a leading economy with a robust IP system. The evolution of judicial specialisation in patent cases highlights the effectiveness and adaptability of Brazil's approach to IP law. ●

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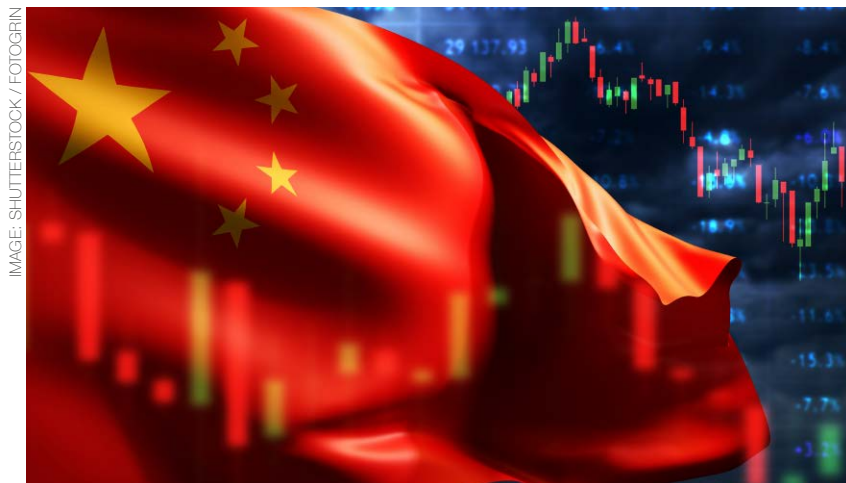


IMAGE: SHUTTERSTOCK / FOTOGRAFIN

## China's genAI boom

Data shows that China is way ahead of the US and other nations in patenting the revolutionary tech, as Liz Hockley discovers.

**C**hina is dominating generative artificial intelligence (genAI) innovation, filing six times more patents than second placed US in the decade through 2023.

A World Intellectual Property Organization (WIPO) report has also revealed that India was the fifth biggest location for genAI invention, with the highest average annual growth rate among the top five leading countries, at 56%.

The WIPO's *Patent Landscape Report—Generative AI* provides insights on patenting activity and scientific publications in the field, including the changing dynamics and applications of the technology, and key research countries and organisations.

According to the report, 54,000 genAI-related inventions—or patent families—were filed between 2014 and 2023, and more than 75,000 scientific papers were published on the topic during the period.

Much of this activity has happened recently, with over a quarter of the patents and 45% of the scientific papers published in 2023.

This has been partly spurred by the introduction in 2017 of the deep neural network architecture behind large language models (LLMs), with the number of patent families for LLMs increasing from 53 in 2020 to 881 in 2023.

### China: More genAI patents than all other countries combined

Four of the top five organisations claiming the most genAI patents were China-based, with the list comprising Tencent, Ping An, Baidu, the Chinese Academy of Sciences and IBM.



**“Through analysing patenting trends and data, WIPO hopes to give everyone a better understanding of where this fast-evolving technology is being developed, and where it is headed.”**

**”**  
Daren Tang,  
WIPO

Since 2017, China can lay claim to having published more genAI patents than all other countries combined, and inventors based in the country are responsible for more than 38,000 patent families between 2014 and 2023.

The top US companies filing genAI patents were IBM, Alphabet/Google (eighth) and Microsoft (tenth).

The WIPO report showed the key application areas for genAI patents to be software; life sciences; and document management and publishing.

In the life sciences industry—for which 5,346 patent families were filed in the decade to 2023—genAI can speed up drug development by screening and designing molecules for new drug formulations and personalised medicines, the report noted.

The analysis also included the main types of data used in genAI patents, with most patents belonging to the image/video category—particularly important for a genAI model known as a generative adversarial network (GAN).

For LLMs, patents involving the processing of text and speech/sound/music are key, and there were 13,494 and 13,480 inventions filed in the relevant period in these areas respectively.

A rapid rise was seen in the number of genAI patents using molecule, gene and protein-based data, with 78% average annual growth over the past five years.

### ‘Just the beginning’

The report noted the concerns around the increasing use of genAI models, from deepfakes being used for malicious purposes, to copyright infringement and the potential impact on the labour market.

Furthermore, WIPO highlighted the limited visibility on recent patent trends due to the lengthy duration from filing to publication in most jurisdictions—commenting that the most current applications in genAI have not yet been published and that it was just the beginning of the surge.

“We can expect a wave of related patents very soon,” the report authors said.

Daren Tang, director general of the WIPO, said: “GenAI has emerged as a game-changing technology with the potential to transform the way we work, live and play.

“Through analysing patenting trends and data, WIPO hopes to give everyone a better understanding of where this fast-evolving technology is being developed, and where it is headed.

“This can help policymakers shape the development of genAI for our common benefit and to ensure that we continue to put the human being at the centre of our innovation and creative ecosystems.

“We are confident that the report will empower innovators, researchers, and others to navigate the rapidly evolving generative AI landscape and its impact on the world.” ●





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# The changing role of trademark counsel

Developments in branding and new regulations are placing a multitude of demands on in-house lawyers, says Frédéric Blanc of Dennemeyer.

**A**s we find our business landscape rapidly evolving, the role of trademark counsel is undergoing significant transformation. Once almost exclusively focused on the traditional concerns of registration and enforcement, trademark counsel are now at the forefront of strategic decision-making and brand protection.

This redefinition reflects the broader changes in IP law and the increasing importance of brands in the digital age. Today, in-house trademark counsel are strategic advisors who work closely with marketing, product development and executive teams. They play a critical role in shaping brand strategy, ensuring that new products and services are not only legally protected but also align with the company's overall branding goals while navigating various constraints.

This shift requires trademark counsel to have a deep understanding that extends beyond regulations to encompass their company's operations, its market positioning and the competitive landscape.

## A complex role expanded

While trademarks are indispensable assets, today's in-house counsel must also consider the function of industrial design rights, whether registered or unregistered. Furthermore, they need to maintain a portfolio of domain names and social media handles, and they should be familiar with copyright laws, both as an opportunity to protect logos and creative works and to ensure they are not inadvertently infringing others' rights in their marketing. Finally, they should be cognisant of the scope of other IP rights, such as geographical indications for comestible and craft/industrial products.



Frédéric Blanc,  
Dennemeyer

**“To effectively manage these changes, both in-house counsel and external advisors need to embrace a combination of strategic, technological and collaborative approaches.”**

It is a similar story when it comes to enforcement, where it is not enough only to consider actions before IP offices and courts. Mediation, as now offered by the European Union Intellectual Property Office (EUIPO) for certain proceedings, and arbitration will have a greater role to play, as will ways of settling domain name conflicts such as the Uniform Domain-Name Dispute-Resolution Policy (UDRP).

Brand owners also have to monitor online marketplaces for infringements, filing complaints where necessary, and may even have to take action for conduct carried out in a metaverse scenario. Additionally, when counterfeit seizures are made, there is a mounting obligation to ensure fakes are disposed of in a sustainable way to minimise environmental damage and waste.

## The demands of modern marketing

Another reason why an in-house counsel needs to consider a range of IP rights is that marketers are becoming ever bolder with the intensifying competition to reach consumers.

For example, many service-oriented brands such as telecoms companies, banks and energy providers rely on registered colours and/or colour combinations to stand out from competitors. Approaching the same need for distinctiveness from a different angle, Intel, Nokia, MGM, Twentieth Century Fox, PlayStation and Netflix have shown the value of having identifiable sounds, and Louboutin is just one example of a brand that has successfully protected a position mark (for its red-soled shoes).

Brands are also using non-traditional means to engage customers, including through social media



campaigns, working with influencers and edgy advertising. Often, these require practical and speedy input from in-house counsel regarding the correct use of third-party rights and material, upholding brand consistency and the drafting of agreements for any necessary licences or undertakings.

### Ongoing compliance with national and international law

If one thing may be said of trademark law, it is not static in the face of technology. Governments frequently update regulations to address new hurdles, such as those posed by digital commerce, counterfeiting and shifting consumer behaviour. Trademark counsel must stay abreast of these changes, advising their companies on how to remain compliant while continuing to protect their brands effectively. For instance, changes in the definition of what constitutes infringement or the introduction of new categories of goods and services can impact a company's trademark strategy, including in metaverse contexts.

Following on from this, trademark counsel have a role to play in regulatory advocacy. This involves engaging with policymakers, industry groups and international organisations to shape the legal environment in ways that benefit their companies. For instance, trademark counsel may participate in public consultations on proposed trademark laws or advance stronger enforcement mechanisms against counterfeiting.

By actively engaging in these activities, trademark counsel help ensure that new regulations are fair, balanced and conducive to brand protection, while also aligning with broader business objectives.

### How to deal with a reshaping profession

To effectively manage these changes, both in-house counsel and external advisors need to embrace a combination of strategic, technological and collaborative approaches.

#### 1. Develop a strategic mindset

Trademark counsel must transition from being reactive to proactive, playing an integral part in the strategic planning of the company. This entails a high level of introspective acuity.

- Understand business objectives: Trademark counsel should be keenly aware of the company's overall business strategy, including market positioning, product development and long-term goals.
- Integrate with cross-functional teams: Counsel should work closely with marketing, product development and executive teams to ensure that trademark strategies are integrated into the company's core activities. This collaboration allows trademark counsel to anticipate potential risks and opportunities, providing guidance that is both legally sound and commercially viable.
- Conduct regular risk assessments: In-house

counsel need to assess the brand portfolio regularly for potential risks, such as trademark dilution, infringement or changes in market conditions.

#### 2. Enhance collaboration and communication

Given the expanding scope of their role, trademark counsel must enhance their cooperation with other departments and external partners. This implies diplomatic tact in the sense of acting as an ambassador for both the brand and the significance of IP itself.

- Work with external experts: Counsel should engage with external IP attorneys, consultants and enforcement agencies as needed. These experts can provide specialised knowledge, particularly in areas such as local trademark law, anti-counterfeiting measures and digital brand protection.
- Educate internal stakeholders: A crucial task is to inform internal teams about the importance of trademark protection and the legal implications of brand-related decisions. This can include training sessions, workshops and guidelines that help non-legal teams understand their function in protecting the company's trademarks.

#### 3. Adapt to a world of digital marketplaces

Reaching consumers has never been so easy or so troublesome. Overcoming the difficulties while cultivating a strong brand identity takes preparation and forethought.

- Global portfolio management: It is essential to develop a comprehensive strategy for managing trademarks across multiple jurisdictions. This includes understanding local laws, prioritising registrations in key markets and anticipating potential challenges such as language differences or divergent practices.
- Focus on digital brand protection: The prevalence of social media means trademark counsel need to pay special attention to protecting trademarks in the digital space.
- Prepare for emerging technologies: Trademark experts need to stay informed about disruptive technologies such as artificial intelligence (AI) and the metaverse to appreciate how these innovations may impact law and develop strategies to protect IP in adapting environments.

#### A greater duty of care

The changing role of in-house counsel reflects the growing recognition that trademarks are not just legal assets but vital components of a company's overall value. As such, these specialists are no longer just protectors of the past but also architects of the future, ensuring that brands remain strong, resilient and legally secure in an increasingly complex world. ●

*Frédéric Blanc is a European trademark and design attorney and managing director at Dennemeyer & Associates France. He can be contacted at: fblanc@dennemeyer-law.com*

“  
These specialists are no longer just protectors of the past but also architects of the future.  
”

# London calling for Shein?

Should the fashion brand's fraught litigation history scupper its plans to list in London, or does it present new opportunities—even for rights owners? Muireann Bolger finds out more.

**W**ith its controversial bid for an initial public offering (IPO) in London this summer, fast fashion giant Shein is aiming high.

In short, it wants to be taken seriously by investors. But several questions stand in its way, with two pressing ones relating to IP.

Should a retailer that has faced a slew of infringement suits worldwide including complaints from H&M and Uniqlo be welcomed by any financial market? And if it succeeds, what sort of message will it send to rights owners in the UK and beyond?

Shein's rise has been remarkable. After emerging from the shadow of the financial crisis in China in 2008, the disruptor's trendspotting savvy, technologies and low-cost strategy saw it become the world's largest apparel company in just over a decade.

Best known for its \$3 t-shirts and \$10 dresses, the brand that was valued at \$5 billion in 2019 is now worth around \$66 billion following a May 2023 funding round.

## Cue to London

Undoubtedly the Singapore-based company's listing would be a welcome boost for the UK financial market, which has seen an exodus of big brands including ARM Holdings, Paddy Power owner Flutter and Virgin Money.

UK government business secretary Jonathan



**“Shein’s lack of respect, ethics and compliance for IP ownership serves to completely erode the value of original design.”**

**”**  
*Dids MacDonald,  
Anti Copying In Design  
(ACID)*

Reynolds is said to be well disposed to the application, reportedly commenting: “My view on any business of this sort is if they are doing business in the UK, we should ideally seek to regulate them from the UK.”

But many are far from happy with this point of view. Celebrity retail consultant Mary Portas has called on the government to block the listing and an online petition by the ‘Say No to Shein’ campaign has attracted more than 40,000 signatures.

To date, Shein's questionable record when it comes to sustainability and workers' rights—compounded by its history of attracting infringement suits—has thwarted the company's efforts to leap the regulatory barriers required to go public.

In the US, after initially filing for a New York IPO in November 2023, Shein found its plans derailed by trenchant opposition from US lawmakers as well as frosty US-China relations.

So could its pivot to the sluggish London market be more successful?

## Drawing the line

For Dids MacDonald, chairman and co-founder of Anti Copying In Design (ACID), there is only one possible response to Shein's quest for a UK listing. “Absolutely and categorically no,” she tells WIPR. “This is nonsense; the UK cannot stem the seismic





tide of counterfeits and fakes at the moment so how Reynolds can hope to 'regulate' them is a mystery.

"Supporting a company's UK IPO listing that has had nearly 100 IP cases against it should not be supported nor should a company which has deep ties to the People's Republic of China be encouraged.

"Together with their shocking record of slave labour and sweatshops, the UK should be giving them a wide berth. A UK listing sends a scant message of disrespect to UK IP creators."

Not all are appalled by Shein, with some brand lawyers believing that their teams could learn a thing or two from the disruptor's technological nous.

Speaking off the record to *WIPR*, one general counsel (GC) of a fast fashion brand took a somewhat surprising stance.

Describing Shein's meteoric growth as "extremely impressive", the senior counsel predicted that if Shein is publicly traded, it will lead to pressure from shareholders and the public for the brand to become "more responsible and transparent".

"The good thing about being publicly traded is that it's democratic," they add. "If people don't like a company, they don't have to invest in it."

For lawyer and fashion trademark expert Rosie Burbidge, partner at Gunnercooke, the crux of the issue is that Shein is fundamentally a technology



**“Many people It has the potential to be quite concerning for a lot of companies. That being said, as with any change of precedent, we may also see new opportunities.”**

**”**

*Rebecca Davey,  
Marks & Clerk*

company, "far more than it's a fashion company".

"Its business model is about making rapid turnarounds of small batches of goods, responding to trends almost immediately. So a trend is identified on the internet, and then that's transformed into a garment super quickly—which on one level is very impressive.

"I think [Shein] has been very clever at identifying and working within that framework quite quickly." She also agrees that a listing could mark a turning point.

"As we've seen with other technology companies, it may help them become a more mature brand."

### **'Controversial precedent'**

Rebecca Davey, senior associate and fashion trademarks expert at Marks & Clerk, believes it could go "either way" for Shein.

"At this stage, it's almost impossible to gauge the outcome," she says, adding that a listing could potentially "set a controversial precedent" and send "a really mixed message" to brand owners.

"It has the potential to be quite concerning for a lot of companies. That being said, as with any change of precedent, we may also see new opportunities," reflects Davey, alluding to the London market's desire for a big name.

Earlier this month, London Stock Exchange Group (LSEG) chief executive, David Schwimmer, refuted any suggestion that the group was lowering standards in order to court Shein.

But MacDonald is unconvinced, decrying the alleged poor standards set by the company—perceived by many as the enfant terrible of fast fashion.

"Shein's lack of respect, ethics and compliance for IP ownership serves to completely erode the value of original design. We have some of the best fashion designers in the world and the design economy as a whole is worth nearly £100 billion pounds."

Most of those at risk, she warns, are lone, micro and SME businesses.

"This is more than a David & Goliath scenario; it is a global behemoth trampling on original design with little or nothing the originator can do to enforce their IP rights or protect their market share," she argues.

In this light, should there be better tests for companies looking to list around their IP behaviour?

No question, according to MacDonald. "High standards of governance, sustainability and transparency should be the key markers. To date, it would appear that Shein does not demonstrate these not only in the UK but globally.

"The culture of creating cheap lookalikes of well-known brands' designs smacks in the face of sustainability fuelling an already 'throwaway' attitude which has little respect for our planet.

"Sadly, many of our ACID members suffer from copying by major global brands who show little respect when it comes to IP."





### IP behaviour tests?

Similarly, Davey believes there should be more stringent tests for companies looking to list in relation to their IP behaviour.

“It comes down to the need to have a really good, clear and transparent IP audit showing that all of a company’s trademarks, copyrights, patents, and so on are in order.

“This should bring to light issues that can help shareholders and investors make their decision about the company’s IP ownership and risk factors such as ongoing claims.

“A history of infringement actions does present quite a lot of risk.”

Other lawyers speaking to WIPR agree there should be more IP safeguards before a company is actually listed but are more circumspect about how this could actually transpire.

Karen Fong, partner at Keystone Law, explains: “We should be more stringent, but the question is how do you legislate for that? To come up with an objective way of testing and measuring would be quite tricky and challenging.”

### The power of ‘cerulean blue’

Added to this conundrum is the question of whether Shein is being treated fairly by its opponents, especially those in the apparel industry.

More than one fashion trademark expert told WIPR that Shein’s IPO bid has seen “a lot of pots calling the kettle black”.

“How about the US corporations that are not behaving themselves? There are plenty of them, and they’ve got their factories in China too. So they’re basically saying: ‘a Chinese owner is bound to be dodgy but US owners are going to be better’. I don’t think we can really say that these days,” reflects one such attorney.

Then there’s the uncomfortable issue of the symbiotic relationship designers and artists have with fast fashion, and the blurred boundaries between them.

Or as Fong puts it: “If you want to start a trend, you only can start it if other people copy you.”

This, she points out, is encapsulated in a speech by fearsome fashion editor Amanda Priestley, played by Meryl Streep in the film *The Devil Wears Prada* about the trend-setting power of ‘cerulean blue’.

In a tirade, prompted by her personal assistant’s professed disregard for fashion trends and the specific

colour of her top, Priestley explains: “What you don’t know is that [your] sweater is not just blue, it’s actually cerulean. You’re also blithely unaware of the fact that, in 2002, Oscar de la Renta did a collection of cerulean gowns, and then I think it was Yves Saint Laurent, wasn’t it?... who showed cerulean military jackets.

“And then cerulean quickly showed up in the collections of eight different designers. Then it filtered down through the department stores and then trickled on down...

“However, that blue represents millions of dollars of countless jobs, and it’s sort of comical how you think that you’ve made a choice that exempts you from the fashion industry.”

Indeed, WIPR spoke to a lawyer (off the record) who felt there was an element of hypocrisy in many apparel companies’ opposition to Shein’s listing.

“You have the top tier designers whose clothes most of us will never be able to afford. And every single High Street store will follow suit—some are very close copies, some are not. It’s irritating, but everyone follows suit.”

In a similar vein, the GC of the fast-fashion brand (speaking off the record) pointed out that “the livelihood of fast fashion is to spot the trend” and that “in some cases fast fashion makes luxury brands or designers relevant because they set the trend”.

### \$60 billion company versus \$100k lawsuits

MacDonald, however, remains the voice of many in her unwavering opposition.

“For the UK to welcome Shein as an IPO listing, especially when there have been stark warnings from our allies in the US Senate Intelligence Committee, would be foolhardy. It confirms the message that ‘anything goes’ if there is a price tag involved.

“Fund managers will have a difficult job to persuade ethical investors that Shein is a good bet with its track record. It will be difficult to endorse a company with such poor records on sustainability, supply chain concerns and complete disrespect for IP ownership.”

Others, however, are unconvinced that the litany of court cases filed against Shein will make a meaningful difference to its IPO chances.

“A company may have a past record of litigation. But what does that actually mean? I suspect if you’re a \$60 billion company, \$100,000 dollar lawsuits in lower courts may be immaterial,” concluded Fong.

WIPR has approached Shein for comment but did not receive any statement at the time of publication. ●



“As we’ve seen with other technology companies, it may help Shein become a more mature brand.”

”

Rosie Burbidge,  
Gunnercooke



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## As data shows a marked drop in non-fungible token filings, there are questions over whether the phenomenon has lost momentum, finds Muireann Bolger.

**I**nterest in acquiring rights in the metaverse and for non-fungible tokens (NFTs) has nosedived dramatically over the past two years but demand for artificial intelligence (AI) marks has increased significantly, data from IP offices reveal.

At its peak, the non-fungible token market reached \$21 billion in May 2022, according to *Forbes*.

But 95% of NFTs created in the 2021–2022 NFT craze are now worthless, dappGambler researchers suggest.

A chart compiled exclusively for WIPR by IP services provider Clarivate looking at NFT and the metaverse applications filed between January 2021 and May 2024 at the US Patent and Trademark Office (USPTO) and the EU Intellectual Property Office (EUIPO) shows “exponential” growth in early 2021.

In the US, filing volume for these marks doubles every two to three months for the first year, but the figures tell a different story from March 2022 onwards.

### Phenomenal growth in first year

In January 2021, the number of requested filings for NFT marks and metaverse-related marks stood at four and 15 respectively, going on to peak at 1,052 and 681 in March 2022.

But by May 2024, NFT and metaverse applications had slumped to 147 and 111 respectively, marking a drop of well over 500% for both categories in just two years.

Filings at the EUIPO paint a similar—if less dramatic—picture. While there were just five NFT and eight metaverse applications recorded in March 2021, this soared to 247 and 252 respectively in November 2022.

However, by May this year the EUIPO recorded 151 NFT mark applications and 72 metaverse-related

“The initial optimism around NFTs and the metaverse was not matched by commercial realities, meaning that action by early adopters was not later replicated by mainstream brand owners.”

Robert Reading,  
Clarivate

marks—a respective 40% and 70% decline over the course of 18 months.

Commenting on the findings, Robert Reading, director, government and content strategy, IP group at Clarivate, said: “The interest in NFTs in the trademark space has been very closely linked to interest in the metaverse (see the chart to see how filing activity for both moves in lockstep).

“However, after reaching a peak in March 2022, US filing volume started to decline, and has fallen every month since.

“It appears that the initial optimism around NFTs and the metaverse was not matched by commercial realities, meaning that action by early adopters was not later replicated by mainstream brand owners.”

### Steady, not spectacular growth, for AI

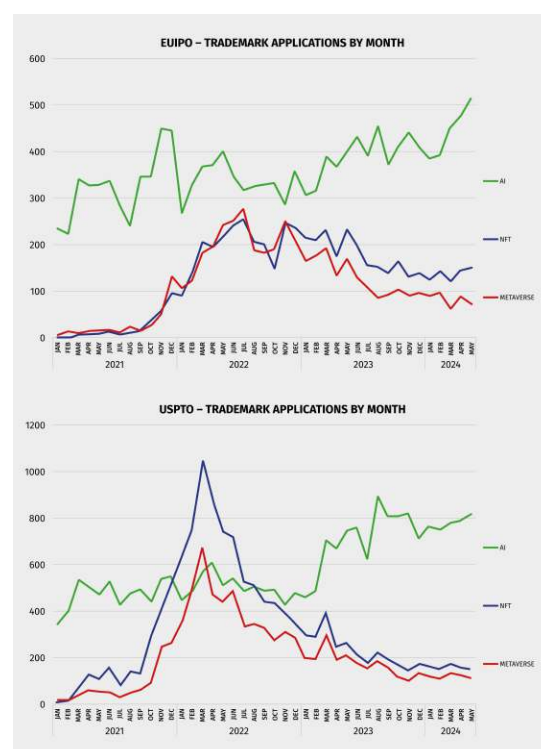
Conversely, artificial intelligence technology has followed a different trajectory in the trademark space, with a steady yet strong trend defining this growth.

In January 2021, the USPTO recorded 343 applications, 563 in March 2022 and 811 in May 2024.

At the EUIPO, there were 233 applications for AI marks in January 2012, which climbed to 513 by May this year.

As Reading explained, the difference in growth trends between NFTs and metaverse when compared to AI is down to the fact that “AI is not new”.

“The USPTO was already receiving around 500 AI-related trademark applications per month in 2021 and 2022, and while there was a spike in early 2023—around about the time when ChatGPT received worldwide attention—the subsequent increase in filing activity has been steady rather than spectacular,” he said. ●



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# How post-filing data rescued Novo Nordisk's Ozempic patent in China

The Beijing IP Court's decision to revive a key semaglutide patent based on experimental data has far-reaching legal and economic implications, says Jennifer Che of Eagle IP.

IMAGE: SHUTTERSTOCK / ALONES

**R**ecently, all eyes have been on China as the fundamental patent covering semaglutide, the active ingredient in Ozempic and Wegovy, will expire on March 20, 2026. During the period leading up to the expiration, Novo Nordisk's patent has been subject to multiple attacks from parties trying to invalidate the patent before this key date.

## Novo Nordisk's patent in China

On September 5, 2022, the China National Intellectual Property Association (China's patent administrative office, hereinafter CNIPA) declared one of Novo Nordisk's key semaglutide patents in China—ZL 200680006674.6—to be invalid (invalidation decision number 57950).

In response, Novo Nordisk submitted significant evidence in the form of post-filing data showing that semaglutide had increased half-life and a longer duration of action when compared with liraglutide, the closest prior art. Nevertheless, despite an amended claim scope and post-filing data, CNIPA declared the patent completely invalid.

Novo Nordisk appealed to the Beijing IP Court (the Court), which reversed CNIPA's invalidation and upheld the patent.

## Post-filing data

One of the biggest concerns for biopharma patent holders in China has been post-filing data. The country is notoriously strict about experimental data in patents, especially in 'unpredictable' fields such as biology and chemistry. Patent applicants typically can only obtain a tight scope of protection around aspects



Jennifer Che,  
Eagle IP

**“China is notoriously strict about experimental data in patents, especially in ‘unpredictable’ fields such as biology and chemistry.”**

of their invention that they have ‘proven’ through working examples.

Contrast this with the US and Europe, where patent applicants often obtain broader claim scopes based on fewer working examples and/or less post-filing data. Most patentees get much narrower patents in China compared to the US and Europe, at least in these ‘unpredictable’ fields.

More recently, China updated its Examination Guidelines on this issue. The current Guidelines stipulate that examiners shall consider post-filing supplemental data:

- when considering inventive step and sufficiency
- if the technical effect demonstrated by the supplemental data could undoubtedly be obtained by a skilled person in the art from the disclosure as originally filed.

## What was in the originally filed disclosure?

The patent disclosure described a genus of compounds that were effective as GLP-1 receptor agonists. Notably, 22 compounds were specifically described with their preparation methods and characterisation data, including semaglutide. The patent disclosure described screening studies using db/db mice and minipigs. However, it did not specify which GLP-1 compound(s) were used in these screening studies.

## CNIPA rejection

During the invalidation, CNIPA rejected all claims for lack of inventive step in view of liraglutide, a molecule with a similar structure and mechanism of action.

Novo Nordisk responded by arguing semaglutide had surprising technical effects that were markedly improved

over liraglutide, pointing to post-filing data showing semaglutide's significantly improved half-life (60-70 hours in minipigs) and long duration of action (48 hours in db/db mice) compared to liraglutide (24 hours).

As the original specification did not specify which compounds possessed the above-mentioned surprising effects (and thus no mention of semaglutide specifically having such technical effects), CNIPA opined that the effects demonstrated by the supplemental data "could not be undoubtedly obtained by a skilled person in the art from the disclosure as originally filed".

### The Court's reasoning

However, the Court reversed, stating that the patent disclosure did possess sufficient support for the idea that semaglutide had a long duration of action. Specifically, the Court pointed to paragraph [0534] in the specification:

[0534] In one aspect of the invention, the GLP-1 agonist has a duration of action of at least 24 hours after administration to db/db mice at a dose of 30 nmol/kg.

According to the Court, the statement 'GLP-1 agonist' was referring to the entire genus of compounds, and thus the paragraph was asserting that all compounds (or at least the 22 examples in the specification) had a duration of action at least 24 hours after administration.

In essence, the general statement in paragraph [0534] was strong enough to indicate that the technical effect could undoubtedly be obtained by a skilled person in the art. The Court emphasised that if a patentee has already demonstrated that a general formula has a particular effect, then one can presume that all compounds within the general formula have this effect.

In this case, the patentee should have the right to submit post-filing data to confirm the effects of a specific compound within the general formula. Otherwise, if this was not allowed, the patentee would need to recite the results of each specific compound in the original specification, which would not be reasonable nor practical.

The Court contrasted the above case with the other study using minipigs on prolonged plasma half-life.

[0543] One aspect of the present invention is the preparation of GLP-1 analogues/derivatives with prolonged plasma half-life suitable for weekly administration. Pharmacokinetic properties can be assessed in minipigs, or domestic pigs as described below.

[0550] A second part of the pharmacokinetic screening was conducted on those compounds with an initial terminal half-life of 60-70 hours or more.

The Court argued that in the minipigs study, the specification did not clearly indicate which GLP-1 analogues had the technical effect of having a longer half-life. Instead, the property of having "an initial terminal half-life of 60-70 hours or more" was recited as the conditions required for a second screening rather than recited as technical effects in paragraph [0550].

The judges argued that, based on paragraph [0550], a skilled person in the art would not be able to infer that semaglutide could be suitable for the second part of the screening, as there was no way to know undoubtedly that semaglutide would have a half-life of 60-70 hours or more. As a result, the Court did not accept the post-filing data for increased half-life.

Nevertheless, the Court still upheld the patent based on the post-filing data for a long duration of action.

### Conclusions

This is a huge case for so many reasons. The importance of the product, the economic and legal impact of the decision, and the fine line the Court ultimately drew to clarify China's position on post filing supplemental data make this a fascinating case to study.

At a minimum, this case broadens what kinds of statements could be sufficient to demonstrate that an idea can be "undoubtedly obtained" from the patent specification as filed. Importantly, in this case semaglutide was never specifically called out as having significantly good PK properties. Instead, the specification held a general position that the compounds (implicitly all the compounds) had a >24 hour duration of action.

The ability to have this additional 'hook' based on generic language could be a lifesaver in a lot of situations. Astute patent drafters should consider carefully what types of general statements asserting technical effects they should add. A general statement that's not entirely true (and unsupported by data) could be fatal, while a general statement that is true (and can be further confirmed with post-filing data), could save the life of a patent—as it did in this case. Be careful making statements that imply only a subset of compounds have a certain technical effect, unless it is true and supported by data.

This case isn't completely over yet. The petitioner who filed the invalidation has appealed to the Supreme People's IP Court. We expect to have a decision before the March 20, 2026 expiration date. ●

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*Audrey Cheung is a qualified Chinese patent attorney at Eagle IP.*

*Yolanda Wang is a principal, Chinese patent attorney, and Chinese patent litigator at Eagle IP.*

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In this case,  
the patentee  
should have the  
right to submit  
post-filing data  
to confirm  
the effects  
of a specific  
compound  
within the  
general  
formula.  
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# Guiding lights: China's top IP firms and practitioners

IMAGE: SHUTTERSTOCK / COREDESIGN

**Newly released rankings reveal the go-to firms and individuals for trademark and patent services in the country, offering expertise to both domestic and global clients.**



*IPR* Insights has released this year's rankings of the top IP law firms and legal practitioners working in China, with a dedicated list on patent services for the first time.

China Trademarks 2024 reveals the best-in-class firms and individuals (available online) involved in brand protection in the country. The rankings are divided into international and People's Republic of China (PRC) firms, with categories for contentious and non-contentious work.

New for this year is China Patents 2024, which details the firms and professionals providing a stand-out service on patent prosecution and litigation.

To compile the lists, the *WIPR* Insights team examined dozens of submissions from law firms ranging from boutique local practices to established major players.

Researchers considered factors including the strength of the firms' IP offering and the profile of their clients—along with market feedback on the perceived calibre of their practice by peers and clients.

The results disclose which firms and individuals are offering the best trademark and patent services in China, as the country's legal market continues to undergo significant changes.

## A shifting landscape

This year's tables retain the distinction between international and local firms. Traditionally, international firms were considered to be the guardians of global client relationships and the go-to on

premium work, while the PRC firms were the ones to instruct for local knowledge and more competitive pricing.

But with the increasing sophistication of local firms and the comfort of international clients with direct instruction of PRC firms, these distinctions have become blurred and the market for premium work much more competitive.

Furthermore, increased geopolitical tension has contributed to a notable exodus of US law firms from the country, either through the closure of offices in China and Hong Kong or a reduction in presence. Reed Smith became the latest to decrease its footprint in China with the announcement in September that it was closing its Beijing office—following Dechert, Morrison Foerster, Sidley Austin and others in shutting down certain operations in the PRC.

However, some international firms that the *WIPR* Insights team spoke to wanted to emphasise—before discussing anything else—that they were committed to remaining in China.

Firms retaining a strong presence in the country include Baker McKenzie—ranked as 'Outstanding' for non-contentious trademark work in this year's listings—which has nearly 300 lawyers across Beijing, Shanghai, and Hong Kong.

A shift has also been underway in terms of client work as Chinese companies expand their international activities, with outbound work now accounting for up to 20% of PRC firms' workload in this year's rankings.

## Legal reform

The growth of Chinese companies to become, in some instances,

Table 1: China Trademarks 2024

PRC FIRMS	
Non-Contentious	
Rank	Firm
Outstanding	CCPIT Patent and Trademark Law Office Chang Tsi & Partners King & Wood Mallesons Unitalen Attorneys at Law Wanhuida Intellectual Property
Highly Recommended	China Patent Agent (HK) Kangxin Partners LexField Law Offices NTD Patent & Trade Mark Agency Tahota Law Firm Zhong Lun Law Firm
Recommended	Beijing Sanyou Intellectual Property Agency Chofn IP East IP Han Kun Law Offices
Notable	China Sinda Intellectual Property Global Law Office JunHe LiFang & Partners Shanghai Patent & Trademark Law Office Shanghai Pacific Legal
Contentious	
Rank	Firm
Outstanding	CCPIT Patent and Trademark Law Office Fangda Partners King & Wood Mallesons Wanhuida Intellectual Property
Highly Recommended	Chang Tsi & Partners East IP JunHe Lusheng Law Firm NTD Patent & Trade Mark Agency Tahota Law Firm Unitalen Attorneys at Law Zhong Lun
Recommended	China Patent Agent (HK) GEN Law Firm Global Law Office Haiwen & Partners Han Kun Law Offices Jincheng Tongda & Neal Kangxin Partners LiFang & Partners Lung Tin IP Partners Watson & Band Jadong IP Law Firm
Notable	An, Tian, Zhang & Partners Beijing TianTai Law Firm China Sinda Intellectual Property Golden Gate Lawyers Yuanhe & Twelve Tables Law Firm

INTERNATIONAL FIRMS	
Non-Contentious	
Rank	Firm
Outstanding	Baker McKenzie Bird & Bird Hogan Lovells Rouse
Highly Recommended	DLA Piper Kilpatrick Townsend Mayer Brown Perkins Coie Squire Patton Boggs
Recommended	AWA Asia Deacons Simmons & Simmons
Notable	CMS Dentons Ferrante Gowling WLG Norton Rose Fulbright
Contentious	
Rank	Firm
Outstanding	Baker McKenzie Bird & Bird Hogan Lovells
Highly Recommended	A&O Shearman Deacons DLA Piper Rouse Simmons & Simmons
Recommended	Kilpatrick Townsend Mayer Brown Perkins Coie
Notable	Clifford Chance Finnegan Reed Smith

world-leaders in their markets has driven an increased focus on IP in the country, as China seeks to both support domestic innovation and encourage foreign investment.

China has made efforts to ensure its IP system is more robust, with new trademark, patent and trade secrets laws, as well as efforts to increase the policing of IP rights and hand out damages.

One international client that *WIPIR* Insights spoke to said: “Trademarks are very important, particularly in China. Areas of concern are counterfeit items and fraud using our marks.”

Progress is underway to combat the problem of malicious trademark applications. CCPIT Patent and Trademark Law Office, one of the ‘Outstanding’ firms in this year’s rankings, achieved success in a civil litigation case against bad faith trademark applications by using anti-unfair competition laws. The matter was recognised by the Supreme Court in China as one of the country’s top 50 typical IP cases of 2023.

Recent amendments to China’s trademark law have also expanded the scope for registering non-traditional marks, although challenges for applicants remain.

A PRC client told *WIPIR* Insights that it had been collaborating with China Pat Intellectual Property Office, a ‘Notable’ firm in the rankings, since 2018. “At first, we engaged China Pat to provide a comprehensive report on how we might better acquire and protect some of our key trademarks, which they accomplished well,” the client explained.

“Subsequently, we commenced working on them on dozens of intricate cases, most of which we emerged [from] victorious with their assistance.”

### Cross-border knowledge

China may have improved its IP offering—but it is still “a very particular country, with a particular culture and legal system”, says *WIPIR* Insights editor Baron Armah-Kwantreng.



Table 2: China Patent Rankings 2024

PRC RANKINGS	
1. China Patent – Prosecution	
Tier	Firms
Outstanding	CCPIT Patent & Trademark Law Office China Patent Agent (HK) King & Wood Mallesons Liu Shen & Associates
Highly Recommended	Beijing Sanyou China Science Patent & Trademark Agent Han Kun Law Firm Shanghai Patent & Trademark Law Office NTD Patent & Trademark Agency Unitalen Attorneys at Law Zhongzi Law Office
Recommended	AFD China Intellectual Property Law Office China Sinda Intellectual Property DEQI Intellectual Property Law Corporation East IP GEN Law Firm Jeekai & Partners Kangxin Partners Linda Liu & Partners Lusheng Law Firm Lung Tin International Patent & Trademark Agent Panawell & Partners PC & Associates Peksung Intellectual Property Wanhuida Law Firm & Intellectual Property Agency
Notable	An Tian Zhang & Partners Boss & Young Patent and Trademark Law Office Chang Tsi & Partners China Pat Intellectual Property Office Co-Effort Law Firm Foundin IP IP March Jiaquan IP Law Firm ZY Partners
2. China Patent – Litigation	
Tier	Firms
Outstanding	China Patent Agent (HK) Fangda Partners King & Wood Mallesons Liu Shen & Associates
Highly Recommended	CCPIT Patent & Trademark Law Office Lexfield Law Office Lifang & Partners GEN Law Firm Han Kun Law Office Watson & Band Law Offices Zhong Lun Law Firm Zhongzi Law Office
Recommended	Advance China IP Law Office Anjie Broad Law Firm East IP Kangxin Partners SITAO IP Wanhuida Law Firm & Intellectual Property Agency
Notable	An Tian Zhang & Partners Boss & Young Patent and Trademark Law Office ZY Partners

INTERNATIONAL FIRMS	
3. China Patent – Prosecution	
Tier	Firms
Outstanding	Baker McKenzie Bird & Bird Rouse
Highly Recommended	Finnegan Kilpatrick Townsend Jones Day
Recommended	A&O Shearman Morgan, Lewis & Bockius Perkins Coie Fish & Richardson
4. China Patent – Litigation	
Tier	Firms
Outstanding	Orrick, Herrington & Sutcliffe Bird & Bird
Highly Recommended	Finnegan Fish & Richardson Jones Day Kilpatrick Townsend
Recommended	Dorsey & Whitney Simmons & Simmons

Businesses wishing to successfully protect their patents, trademarks and other assets in the country need law firms based in China with the expertise to navigate the complexities of the jurisdiction.

“You can’t do this ‘remote control’ from New York, London, or Paris,” says Armah-Kwantreng, explaining that being present in person, able to attend meetings, and seen by clients, is key.

One international client said: “We use Kilpatrick Townsend in China and elsewhere. Criteria was actual experience in China with other clients.”

Relationships are invaluable; some attorneys cited this as their reason for staying in China, explaining that the connections they had built over several decades could be lost permanently if they were to depart.

Firms and individuals that made it onto this year’s China Trademarks and Patents lists offer the cross-cultural prowess needed to manage or enforce IP portfolios in the country.

This includes speaking multiple languages and having deep knowledge of both China and international IP laws—and understanding the perspectives of both Chinese and global businesses.

For instance, ‘Highly Recommended’ PRC firm China Patent Agent says its teams possess intimate knowledge of the IP laws of China, the US, Japan, and Europe—and their working languages include Chinese, English, Japanese, German, French, Korean, and Cantonese.

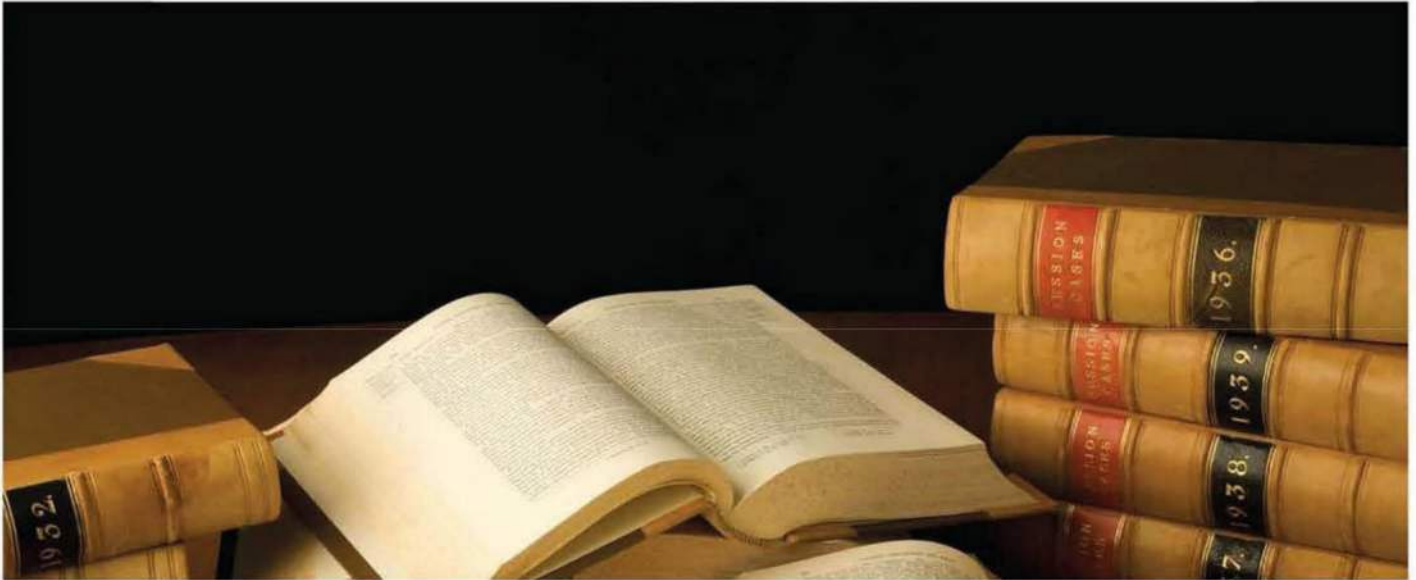
Armah-Kwantreng proposes that for companies and law firms wishing to do business in China, the rankings provide a comprehensive list of “the best guides and navigators for your IP” both in China and beyond. ●

**See the WIPR Rankings page for more information on the firms in this year’s lists, as well as the top-ranked legal professionals in China: [www.worldipreview.com/rankings](http://www.worldipreview.com/rankings)**

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Established In

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Attorneys

**16**

Partners

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# The Eurasian Patent Organization: a growing attraction

By Erik Viik of Papula-Nevinpat



“The number of patent filings has been increasing, with the Eurasian patent system gaining popularity among foreign applicants.”

The Eurasian Patent Organization (EAPO) offers a system for regional patent protection in eight member states: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, and Turkmenistan. Since the signing of the Eurasian Patent Convention in 1995, the EAPO has attracted foreign applicants due to its single examination procedure, uniform patent protection, and wide geographical coverage. Being an international inter-governmental organisation, the EAPO operates independently from the Russian Ministry of Economic Development, despite its location in Moscow.

Once granted, a Eurasian patent holds the same status as a national patent. It is kept in force in selected member states by paying annuity fees to the Eurasian Patent Office. The prosecution proceedings are conducted in Russian, and there is no requirement for additional translations or validation fees after the patent is granted.

Most applicants select to keep Eurasian patents in force at least in Russia and Kazakhstan. Statistics from the patent office reveal that in 2023, of the total valid Eurasian patents (19,828), 96% were in force in Russia, 64% in Kazakhstan, 58% in Belarus, and 49% in Azerbaijan. The remaining member states each had between 8,325 and 8,834 valid Eurasian patents (42–45%).

## Eurasian filings on the rise

The number of patent filings has been increasing, with the Eurasian patent system gaining popularity among foreign applicants. While filings in some national patent offices have decreased, in particular the Russian Patent Office, Eurasian filings have been steadily growing.

In 2023, the Eurasian Patent Office received 3,203 patent applications from

outside of the Eurasian member states, a 3.4% increase compared to 2022 and 87% of all Eurasian applications. In particular, applicants from the US filed 1,171 applications in 2022—more than any other year in the past—and 1,122 in 2023. The US was also the country with the most Eurasian patents granted in 2023 (868), followed by Russia (682), Germany (257), and Switzerland (209).

Similarly to the past, the pharmaceutical industry and medical sector accounted for the largest share of Eurasian patent applications. Specifically, 23.1% of the applications filed in 2023 related to preparations for medical purposes, 26.4% related to organic chemistry, and 8.1% related to medical science. On the other hand, applications related to electricity, circuitry, electronic communication, etc—were underrepresented, as they totalled only 2.34% of all filed applications.

## Efficient examination phase

The Eurasian Patent Office encourages electronic filing of patent applications. In the past year, 98% of all applications were filed electronically, compared to only 83% in 2019. Presently, almost all official correspondence (92%) is issued exclusively in electronic form.

The patent office has been conducting examinations swiftly and without unnecessary delays. In 2023, the average examination term for Eurasian patent applications continued to decrease—the average first action period was 8.9 months (10.9 months in 2022). The Mechanics and Physics Division issued the first office action within 2.64 months (5.6 months in 2022) and the Chemistry and Medicines Division within 12.4 months (14.8 months in 2022).

To accommodate the growing number

of applications, the Eurasian Patent Office has increased its official fees significantly over the past two years. In July 2022, the fees were raised by 25–30%, and there was an additional 25% increase in January 2024. Currently, the Eurasian filing fee (RUB 50,000, US \$565) is approximately 13–15 times higher than the filing fees for national applications in countries such as Kazakhstan or Russia. However, the disparity is less significant in examination fees, with the Eurasian examination fee being about five times higher. If patent protection is sought in at least two Eurasian member states, the level of the Eurasian official fees can be justified due to the streamlined single process, which avoids multiple separate prosecution proceedings before various patent offices.

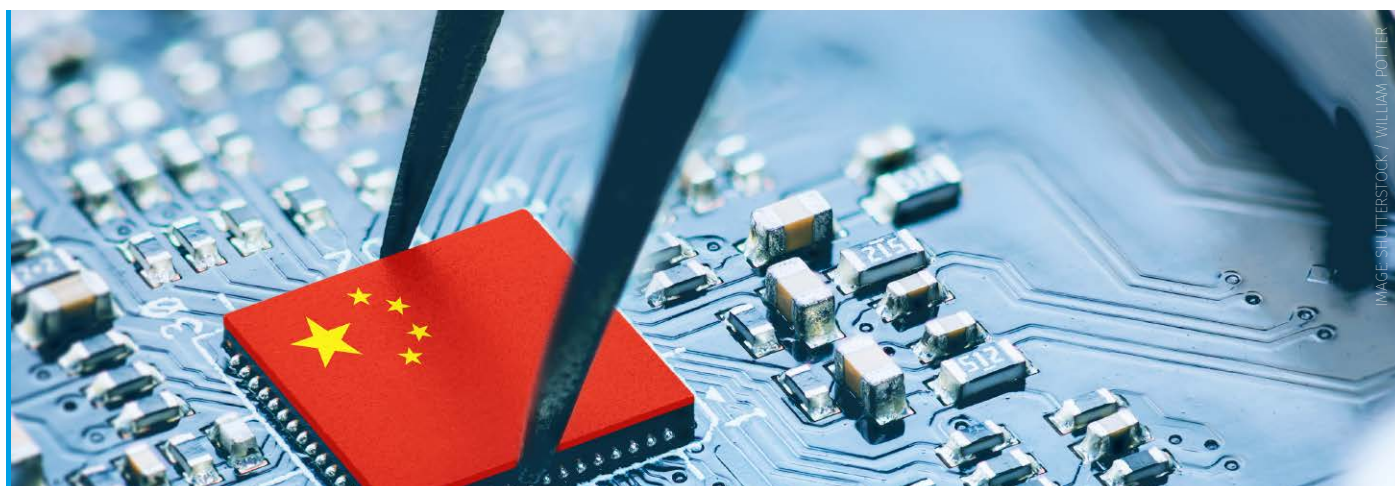
The official fee schedule is denominated in rubles, with settlement available in various currencies such as USD, euro, and ruble. The patent office maintains multiple accounts in different banks, including IDBank in the Republic of Armenia.

## Outlook

The Eurasian Patent Office is an independent intergovernmental organisation that offers a single examination procedure in one language. It continues to attract foreign applicants, as evidenced by a steadily growing number of new patent applications. In addition to providing wide geographical coverage, uniform patent protection, and swift, predictable examination, the Eurasian system offers flexibility in matters relating to claim construction, as well as due date extensions and reinstatements. ●

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# New practice on patentability of AI inventions in China

By Hengwei Zhou of CCPIT Patent and Trademark Law Office



**“ We have seen an increase in the number of allowed AI patents, which would otherwise face subject matter rejections in absence of these criteria. ”**

With rapid advancement of artificial intelligence (AI) technology, the world is undergoing unprecedented transformations. When innovators in AI technology seek to protect their intellectual achievements through patents, a primary challenge arises—the definition of patentable subject matter.

As stated in Article 2.2 of China’s Patent Law, patentable subject matter excludes non-technical solutions. There was a lack of clear criteria in China’s patent practice for determining whether an AI invention constitutes a technical solution, given the abstract, complex, and unobservable nature of AI algorithms.

This situation has changed with the revised Guidelines for Patent Examination coming into effect on January 20, 2024, which introduced three specific criteria for evaluating the patentability of an AI invention. This article introduces these criteria as well as our observations of their

practice over the past six months, aiming to clarify the latest patentable boundaries of AI inventions in China.

## Defining accepted data types

The first criterion focuses on the nature of data processed by an AI algorithm. To put it simply, if data employed by the AI algorithm defined in the claims possesses a clear technical connotation, that data is deemed technical and the AI invention utilising this data is a patentable technical solution.

Over the past six months, we observed that diverse types of data are recognised as technical, including images, texts, audio data, measurement data, cellular communications, network packets, etc. Even generalised concepts such as sensor data and media data are accepted by the Patent Office. However, purely mathematical constructs like vectors, features, or graph

topologies, are still deemed non-technical.

We also observed that the Patent Office does not require all data processed by the AI algorithm to be technical. It is sufficient to define some technical data in the claims, regardless of the technicality of other data, such as intermediate data or output data, of the AI algorithm. The Patent Office also accepts general claim language such as ‘an AI model for image processing’, implying the data being processed includes images, which are deemed technical data.

The first criterion is quite straightforward. When preparing patent applications, applicants are advised to include in the specification a comprehensive list of potential technical data involved in their AI model, from which they may choose to define desired data types in the claims to avoid a potential non-patentable subject matter issue. In the case of a broadly applicable AI model, various technical data types may be relevant. While

seeking protection for such an AI model, applicants may submit divisional applications for different technical data types.

### Technical association

The second criterion involves assessing a particular technical association between an AI invention and the internal structure of a computer system. If such an association exists, and if the AI invention addresses a technical problem within the computer system and achieves performance improvements, it could be accepted as a patentable technical solution.

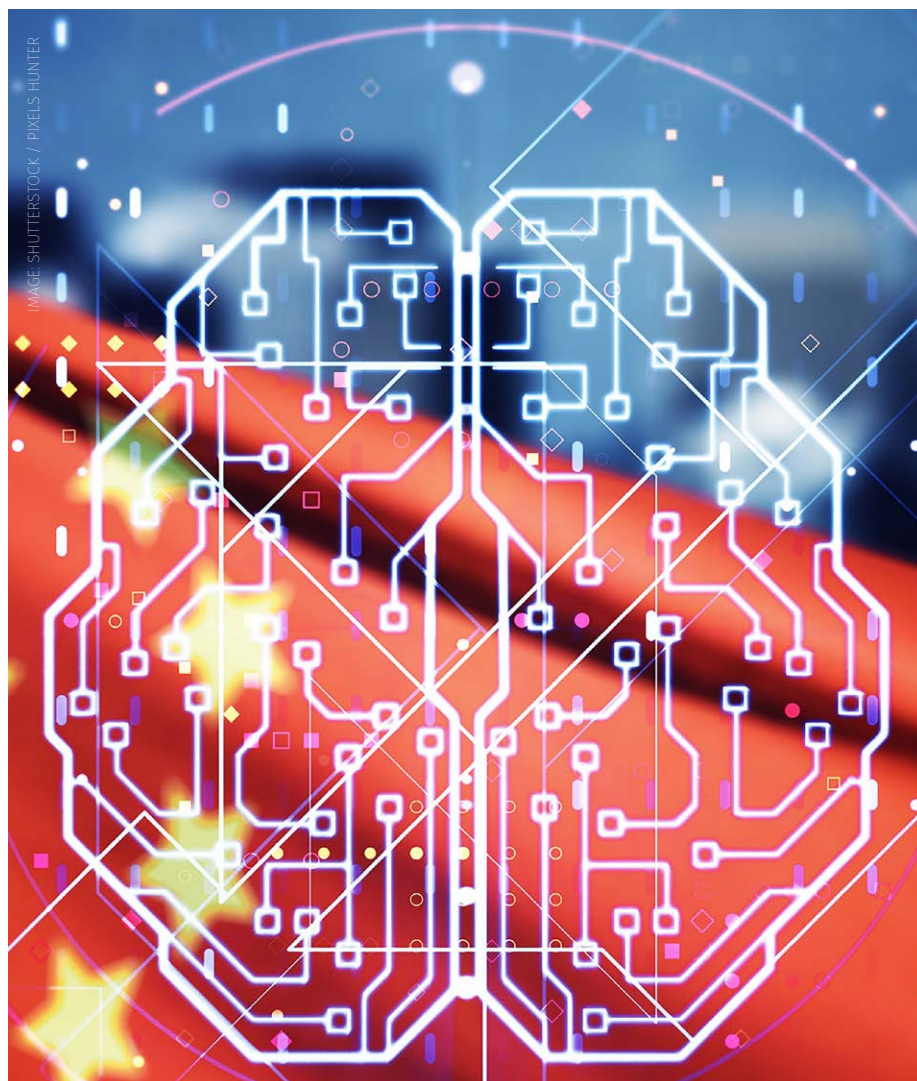
The key point is to present the technical association. In our observations, a technical association may manifest itself through the implementation of the AI invention that either depends on or impacts the internal structure of the computer system. For example, an AI invention that adjusts execution parameters of its model based on the number of processing cores would be considered to have a direct technical association with the internal computer structure.

An AI invention that solely enhances the AI algorithm, even if such enhancements reduce execution time of the algorithm, would not be deemed to be a technical solution. Put differently, if an AI algorithm is independent of the computer device on which it runs and can be executed on any general-purpose computer and achieve the same effect, that algorithm would not meet the second criteria for being accepted as a technical solution.

To satisfy the second criterion, it would be beneficial for applicants to provide clear explanations in the specification regarding the specific technical association between the AI invention and the internal structure of the computer system. The internal structure may involve hardware, software, or both. Additionally, the applicants may provide an explanation of how the technical association leads to desired technical effects. Exemplary technical effects include reducing data storage, decreasing data transmission demands, enhancing hardware processing speed, etc.

### Natural correlation

The third criterion focuses on identifying a natural correlation through big data mining. If an AI invention mines an inherent correlation within big data from specific fields and the correlation aligns with natural principles and potentially resolves



technical issues pertaining to the reliability or accuracy of data analysis, leading to potential technical effects, that AI invention could be considered a technical solution.

The essence of this criterion is to present a mined correlation conforming to natural principles. In China's practice, it has been observed that 'natural principles' generally encompass physical principles, chemical phenomena, and biological characteristics, excluding purely mathematical theorems, business logic, and man-made rules.

For instance, a correlation between air humidity and painting quality in industrial factories might be considered to conform to natural principles. An AI model trained on effective court decisions to predict litigation outcomes is not deemed technical, because it generally reflects man-made laws.

The third criterion is relatively subjective. Applicants are advised to draft their specification to demonstrate the potential natural attributes of the correlation discovered by the AI invention, even if

providing a comprehensive explanation may be challenging. This might enable the Patent Office to perceive the underlying natural correlation.

An AI invention is deemed technical and patentable if satisfying any one of the three criteria discussed above. We have seen an increase in the number of allowed AI patents, which would otherwise face subject matter rejections in absence of these criteria.

The introduction of the criteria, which are specifically designed for AI inventions, signifies a relaxation of the restrictions by China's Patent Office and demonstrates the country's dedication to fostering AI technological development. For innovators in the AI sector, China not only offers promising business prospects but has the potential to emerge as a pioneer in the protection of IP. ●

*Hengwei Zhou is a patent attorney at CCPIT Patent and Trademark Law Office. He can be contacted at: zhouhw@ccpit-patent.com.cn*





# Olympic IP: sporting trademarks from a Swedish perspective

By Petter Rindforth, managing partner, Fenix Legal



The Paris 2024 Olympic and Paralympic Games have just ended. With 360,000 hours of television broadcast and billions of viewers worldwide, it is a perfect place to explore your trademarks and get new customers. The 10,500 athletes are also, of course, registered or not, trademarks for themselves, the clothes they wear, the sporting goods they use, and the countries they represent.

And with that, the bad guys also see a business opportunity. According to the EU Intellectual Property Office's (EUIPO)

IP 2023 perception study, based on 25,824 interviews conducted between January 30, 2023 and February 15, 2023 with residents in all EU member states, 12% of EU citizens access or stream sports content from illegal online sources, while fake sports equipment costs manufacturers €850 million (\$945 million) per year.

According to the EUIPO's Intellectual Property and Youth Scoreboard, 10% of EU youths aged 15–24 admit to purchasing fake sporting equipment intentionally.

Unfortunately, Sweden is among the top ten most affected countries when it comes to annual lost sales from counterfeit sports equipment, being in seventh place with a value of €30.8 million (compared to the number one country France, which saw lost sales of €143.3 million).

Research shows that 14% of Swedes access or stream content from illegal online sources for sports viewing, and the figure rises to 33% among youths aged 15–24.

Additionally, 9% of Swedish youths in this age group have knowingly bought counterfeit sports equipment online.

The European Commission has adopted two recommendations for the member states, EU organisations and authorities to cooperate: the Commission Recommendation of May 4, 2023 on combating online piracy of sports and other live events; and the Recommendation to combat counterfeiting, both offline and online.

Some of the key actions proposed by the Commission are: adapting procedures to tackle new counterfeiting practices; optimising information sharing in court proceedings; and ensuring appropriate compensation for damages, including both material and moral damages. It also suggests promoting the use of alternative dispute resolution for all IP disputes (mediation), as well as developing practices aimed at faster, cheaper, and more ecological storage and disposal of counterfeits.



**“The ‘Björn Borg’ trademark is registered in over 30 countries and regions around the world, but Borg has no rights.”**

### Defensive moves by football clubs

The traditional trademarks of athletes are their names, or accepted nicknames. A basic protection in Sweden is the Act (1978:800) on Names and Images in Advertising (the Names Act). The Act gives fundamental protection against commercial use of an individual's name or picture in marketing without the explicit permission of the individual. Anyone who intentionally or with gross negligence violates the Names Act may be liable to a fine, and the suffering person is entitled to reasonable compensation for the infringement.

The Swedish Football Association (Svenska Fotbollförbundet) has produced a template for warning letters that affected football clubs can send out to infringers. The problem is that if the infringer does not reply (which unfortunately is the usual result), the football clubs normally do not have a sufficient budget to proceed with legal actions.

The best solution is therefore to register the trademark, and then create clear legal guidelines of use.

One example is the Swedish football club AIK. The letters A, I, K stands for Allmänna Idrottsklubben (The General Sports Club), which was founded in 1891. It has protected its trademark in different versions in the EU as well as the UK, and for all kinds of goods and services that are of interest. ‘Allmänna Idrottsklubben’ is European Union trademark number 018221455, ‘AIK’ is EUTM number 018221454, and its figurative/logo is also registered in three different forms. AIK Fotboll's graphical guidelines state that:

“AIK's club mark is trademark protected and may not be used without AIK's permission. However, it is permitted to use the AIK trademark in obituaries if it is not distorted in any way. For questions regarding the club trademark, tips on trademark infringement, etc send an email to [info@aik.se](mailto:info@aik.se), if permission is approved, AIK's graphic guidelines below must be followed...” The visual guideline is 120 pages, with clear details and pictures.

Another well-known Swedish football club, Djurgårdens IF (DIF) has decided to register trademarks not related to its official name, but to specific services: Swedish national trademark numbers 550710 ‘Urban Sports’, 550709 ‘Urban Hockey’, and 551424 ‘Ishockey för alla’ (ice hockey for everyone), all for ‘entertainment; cultural activities’ in class 41.

### Finding the winning strategy

When it comes to individuals, the trademark policy and protection differs, depending on the person and surrounding advisors.

Swedish alpine skier Anja Pärsson, the woman who has won the most individual alpine Olympic and World Cup medals (17) of all time, is one example. She ended her skiing career in 2012. In 2002 she filed an EU trademark for her name ‘Anja Pärsson’, which was registered in 2004 (number 002879187) for goods and services in classes 3, 25, 28, 31 and 41. For some reason, the trademark was not renewed on September 24, 2022 and has expired.

The same nonuse of trademark is seen with the Swedish former World Cup alpine ski racer Ingemar Stenmark. He is well known with 86 victories in the World Cup, and one Olympic gold. However, he has not registered ‘Stenmark’ as a trademark. Instead, he collaborates with Swedish

company Spektrum, which sells ‘classic and high-performance glasses’ by referring to Stenmark as a customer and co-operative business partner.

A more positive example is the Swedish football player Zlatan Ibrahimovic. Via his company, with the not entirely true-to-life name Unknown AB, he is the owner of the word trademarks ‘Zlatan’ and ‘Zlatan Ibrahimovic’, registered in the EU (numbers 008209124 and 008235111) and UK for goods and services in classes 3, 6, 8, 9, 12, 14, 16, 18, 21, 24, 25, 26, 28, 29, 30, 32, 25 and 41. The trademark ‘Zlatan Ibrahimovic’ is also registered in Turkey, however only for class 3 goods.

The ‘Zlatan Ibrahimovic’ trademark has a good reputation in Sweden, and one reason is that Ibrahimovic himself is still active in the sport, and owns the registration with full knowledge of the importance of goodwill.

That is not the case with the ‘Björn Borg’ trademark. Björn Borg is a Swedish former No 1 tennis player, with 11 Grand Slam singles titles. In 1989, Anders Arnborger and Louise Hildebeck started the company World Brand Management—which then changed name to Björn Borg—for producing and selling ‘Björn Borg’ clothing. The tennis player himself was initially actively involved in the marketing of the goods trademarked ‘Björn Borg’. However, in 2007, Borg sold his trademark to the company for 124 million SEK (€10.8 million). The agreement included a paragraph that gave Borg an extra payment based on 1.5–2% on the sales during the years 2007–2016.

Today, the ‘Björn Borg’ trademark is registered in over 30 countries and regions around the world, but Borg has no rights. He has reflected in several interviews on what happened in 2007. “I don't know what flew into me. Perhaps it was a bit of premature spring cleaning. It was a stupid decision to sell the trademark.”

To summarise: register your trademark, and keep it valid in your name. Which is exactly what Sveriges Olympiska Kommitté (Sweden's Olympic Committee) has done. In 1996 it registered the trademark number 336393 ‘Olympic’ (word) for all goods and services in classes 1–42. ●

Petter Rindforth is managing partner at Fenix Legal. He can be contacted at: [info@fenixlegal.eu](mailto:info@fenixlegal.eu)





## CANADA

## IPH group appoints Canadian regional CEO

Law firm network IPH has appointed Stuart Wood as its regional CEO for Canada.

Wood brings more than 20 years of experience in the industry to the group.

The appointment comes in the wake of the group's extensive activity in Canada. IPH acquired Canada's Smart & Biggar and ROBIC in October 2022, followed by law firm Ridout & Maybee in September 2023.

Andrew Blattman, IPH managing director and CEO said: "I am delighted to welcome Stuart as the new CEO of our Canadian operations. Stuart has a unique blend of strategic acumen, entrepreneurial instinct and deep experience in Canadian professional services."



Stuart Wood, IPH

**“ I am delighted to welcome Stuart as the new CEO of our Canadian operations. Stuart has a unique blend of strategic acumen, entrepreneurial instinct and deep experience in Canadian professional services.**

**”**

Andrew Blattman

In less than two years, IPH's business in Canada now accounts for more than a quarter of the group's patent filings and annualised earnings (on a pro forma basis), becoming the network's second-largest market.

Wood is based in Toronto and joins IPH Group from Caravel Law where he was the CEO, and had responsibility for the firm's growth strategy.

Speaking about his appointment, Wood said: "I am excited to join IPH as Canadian Regional CEO at such a transformative time for the group. I look forward to working with our talented teams across Canada to drive our strategic initiatives and contribute to the group's global success."

## UNITED STATES

## 'This is big for us': Kirkland nabs former assistant US attorney

Kirkland & Ellis has hired Laura Vartain Horn as a partner in its IP practice group.

Vartain Horn is a former senior federal prosecutor with more than a decade of experience handling and overseeing significant criminal, IP, national security and cybersecurity cases.

She most recently served as Chief of the National Security and Cyber Section of the US Attorney's Office for the Northern District of California, where she led domestic and cross-border national security and cybersecurity prosecutions, including IP prosecutions.

In these roles, Vartain Horn has led and supervised dozens of high-profile technology cases to verdict covering complex issues concerning cutting-edge technologies.

"This is big for us. Laura's unique

blend of stellar trial work, extensive trade secret protection work and experience with government investigations is a perfect fit with our IP jury trial practice as well as other work we're doing at the firm," said Adam Alper, a Kirkland IP litigation partner. "We are excited to welcome her to the team."

During her time with the US Attorney's Office, Vartain Horn tried nine federal cases while also holding supervisory roles for nearly seven years. Earlier this year, Vartain Horn served as the lead prosecutor on charges brought against an individual for stealing Google's supercomputing and artificial intelligence technology.

Months prior to that, she was the lead prosecutor who secured the federal convictions against the man who attempted to kidnap then-speaker of the US House of Representatives, Nancy Pelosi, and assaulted Paul Pelosi.

"Our IP litigation team drives success through hard work, creativity and teamwork, particularly before juries at trial. We see that same passion and work ethic in Laura," said Mike De Vries, a partner in Kirkland's IP litigation practice. "She will fit in great with our team in California and across Kirkland."

"The IP litigators at Kirkland have a remarkable track record in all phases of litigation, particularly in securing significant jury verdicts. Their success reflects relentless preparation as well as creativity and collaboration amongst a strong team and with their clients," Vartain Horn said. "I'm thrilled to join this team and also to bring my government experience into Kirkland's other litigation work including government, regulatory and internal investigations."

**“ Our IP litigation team drives success through hard work, creativity and teamwork, particularly before juries at trial. We see that same passion and work ethic in Laura.**

**”**

Mike De Vries

## UNITED STATES

## Foley Hoag promotes senior IP partner to management team

Foley Hoag has promoted senior partner and patent attorney Hathaway Russell to



managing partner, where she will work alongside current managing partner Jim Bucking as part of a five-member executive committee.

Russell focuses her practice on the life sciences IP industry, and has assisted pharmaceutical and biotechnology companies as well as academic institutions with patent portfolio management, freedom-to-operate assessments, due diligence evaluations and inventorship disputes.

She has been at the firm for more than 17 years and is a senior partner in the IP department, practising in the patent prosecution group and life sciences team.

Her experience includes managing a blockbuster drug portfolio; engaging with the US Patent and Trademark Office; submitting *amicus* briefs to the Supreme Court in *Mayo v Prometheus* and providing non-infringement patent opinions in the electrochemical industry.

The three other members of Foley Hoag's executive committee were all elected in 2024 and are co-chair of the state attorney general group Kevin Conroy; co-chair of the technology group Mark Haddad; and Jeff Quillen, co-chair of the life sciences group.

Commenting on her appointment, Russell said: "I'm excited to take on the managing partner role and lead Foley Hoag into an exciting next era of growth.

"Together we will build on our firm's strengths while charting a course where talent flourishes, innovation thrives, and our clients' success drives everything we do."

#### GERMANY

### Morgan Lewis deepens German bench with double partner hire

As it continues to strengthen in Germany, Morgan Lewis has added two IP partners to its Munich office: Alexander Klett and Christoph Mikyska.

Both join from Reed Smith, with Klett starting immediately and Mikyska beginning his new role at a later date.

"This is an exciting time for our German offices. We have been in growth mode—especially in the last 18 months since we established our second office in Munich," said Florian Harder, managing partner of the firm's Munich office.

"With a strategic approach, we've expanded our services into key market sectors where we are seeing a surge in



Christoph Mikyska, Morgan Lewis

demand and activity, namely technology, life sciences, real estate, healthcare, and media."

The firm also hired private equity lawyer Sebastian Dexheimer in Frankfurt.

"With extensive knowledge of their respective areas in the Germany market, combined with a collective entrepreneurial spirit and collaborative nature, Alexander, Christoph, and Sebastian will be excellent additions for our team," said Joachim Heine, Frankfurt office managing partner.

#### New Munich partners

Klett focuses primarily on nontechnical IP litigation and regularly represents clients in major proceedings before the German



Alexander Klett, Morgan Lewis

and European authorities and courts. He also advises clients on an ongoing basis in the areas of trademarks, designs, copyright, and unfair competition.

Mikyska represents clients on all matters relating to trademark, design, and copyright law as well as unfair competition law, with IP litigation a particular focus. He represents clients in disputes before the trademark offices and courts and has been involved in several landmark proceedings in trademark and copyright law before the higher regional courts and the Federal Supreme Court.

In addition, Mikyska advises on the registration of IP rights, portfolio management, trademark strategies, and licensing issues.

#### GERMANY

### Hogan Lovells patent litigator joins EIP in Germany

EIP has continued to grow its IP offering in Germany with the addition of patent attorney and Unified Patent Court (UPC) representative Felix Hütt.

Experienced litigator Hütt, who joins EIP's Düsseldorf office from Hogan Lovells, is a German and European patent attorney.

He brings expertise across various technology fields to the firm, including information and communication technology, semiconductors, electric engineering, software, and optics.

Hütt has worked on major patent litigation campaigns, including those involving standard-essential patents (SEPs).

EIP has been expanding its IP practice in Germany, promoting two members of the team in Düsseldorf—Isabelle Schaller and Sebastian Fuchs—to partners earlier this year.

They joined newly promoted Alex Morgan and Ben Willows to bring EIP's international partnership to 36 across the UK, Germany, Sweden, and the US.

Christof Höhne, partner at EIP's Düsseldorf office, said: "It is great to see EIP's team in Germany growing and developing. Earlier this year, we had two partner promotions within the team.

"Now, with Felix joining, we are complementing our skillset. We are confident that Felix will play a key role in the continued growth of EIP."

Hütt said: "I am thrilled to be joining a dynamic team that has made a name for itself in big litigation.

"I look forward to bringing my experience and expertise to the table to work with the team in advising and representing clients on the most complex and significant matters."

## CHINA

## Baker McKenzie China unit hires Beijing litigator

FenXun Partners, Baker McKenzie's joint operation platform partner in China, has brought in Cassidy Guo as a partner.

Guo specialises in IP litigation and related anti-monopoly and anti-unfair competition litigation. She has experience in representing technology companies in IP disputes, including patent infringement and invalidation, trade secrets and software copyright disputes, and related non-contentious matters.

"FenXun and the joint operation it has established with Baker McKenzie offer me the ideal platform to deliver first-class legal services with a combination of Chinese and international law advice," said Guo.

Many of the cases Guo has represented were selected as model cases by provincial courts and the Supreme People's Court. Before joining FenXun, Guo worked at King & Wood Mallesons and Fangda Partners.

Yingzhe Wang, managing partner of FenXun Partners, said: "We are thrilled to have Cassidy on our team. China presents abundant opportunities for patent work

given the size of the domestic market and also the robust manufacturing and R&D activities in the country.

"Cassidy's joining not only helps us deepen our relationships with existing and new clients, but also bolsters our ability to better support clients with their growing IP needs and protection of their valuable IP assets."

Isabella Liu, who leads Baker McKenzie's China operation, said: "The experience that Cassidy brings, particularly in patent litigation and invalidation in the areas of computer software, machinery, electronics and communications, complements our regional and global practices well".

## AUSTRALIA

## K&L Gates strengthens TM team in Melbourne with new partner

K&L Gates has appointed trademark specialist Sally Foreman as a partner for its Melbourne office.

Foreman joins K&L Gates from Davies Collison Cave, where she was a principal and trademark attorney.

She has more than two decades of experience as IP counsel to some of Australia's largest corporations, managing large national and international IP protection and enforcement projects and advising on complex, high-risk IP legal issues and strategies.

Foreman also has experience of working with government bodies and educational organisations, as well as entrepreneurs. Her industry experience and sector knowledge spans manufacturing, technology, motor vehicle, telecommunications, renewable energy, mining, agriculture, biotechnology, food and beverage, fashion, beauty and personal care sectors.

Commenting on the appointment, K&L Gates' regional managing partner, Australia, Jason Opperman, said: "We are delighted to welcome Sally to the firm as we continue to pursue growth in areas where we see significant opportunity.

"Sally's impressive credentials further bolster our highly successful global IP practice in response to increasing client demand."

IP practice area leader Jonathan Feder commented: "Sally's arrival continues our growth strategy in the global IP team, with recent additions in Germany and the US."

Foreman is the eighth new partner to join the Australian offices of the firm since January 2024. Her arrival closely follows the

appointments of corporate partners Luke Paterson (Perth), Divesh Patel (Sydney), Khilen Devani and Carl Hinze (Brisbane), finance partner Claudine Salameh (Sydney), and real estate partners Simon Moen (Perth) and Justin O'Callaghan (Brisbane).

## UNITED KINGDOM

## Kirkland & Ellis adds senior partner to 'spearhead' tech and IP

Kirkland & Ellis has added highly experienced partner André Duminy to its Technology & IP Transactions Practice Group.

Duminy previously spent 24 years at Clifford Chance, including 17 years as partner at the firm.

In his previous role, Duminy was the head of the London Tech/Digital Group and co-head of the Strategic Sourcing and Complex Contracting Group.

Duminy specialises in outsourcing, technology and business separation matters and has extensive experience handling multi-vendor and multi-jurisdictional carve-out transactions.

Duminy's clients have included Royal Dutch Shell, HSBC, ABN AMRO, UBS, Asterion, IBM, and The Co-Operative Bank.

His expertise spans across various sectors, including financial services, pharmaceuticals, telecommunications, technology, oil and gas, manufacturing, and consumer goods and retail.

Jon Ballis, chairman of Kirkland's executive committee, described Duminy as an "exceptional" lawyer and a "proven leader" in the technology and IP transactions sector.

This is a practice area of Kirkland's that continues to expand and evolve alongside its broader M&A practice in Europe, explained Ballis.

Most of the transactions Duminy has handled are based outside the UK, giving him experience working with clients and suppliers on projects across Europe, the Middle East, Asia, and the US.

Matthew Elliott, member of Kirkland's executive committee and corporate partner, said: "André's expertise will significantly benefit our private equity and financial sponsor clients' investments across relevant asset classes."

Duminy's addition aims to "spearhead" the expansion of the London Technology & IP Transactions practice, according to Elliott. ●



Cassidy Guo, Baker McKenzie



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