How do foreign parties really fare in Chinese patent litigation?

An exclusive analysis of patent litigation statistics from across the whole of China in 2016 reveals that contrary to popular belief, foreign parties are doing extremely well in both infringement and validity battles

By Jacqueline Lui and Libin Jin

China is by far the most litigious country in the world in terms of IP cases, with the total amount of IP litigation in Guangdong alone far outnumbering that in the whole of the United States. Despite this, the question "Are patents enforceable in China?" remains a familiar one among many foreign patent owners. This article draws on new statistics to assess the enforcement of patent rights in China – especially when it comes to overseas rights holders.

In addition, it scans publicly available data to review the number of IP cases involving at least one foreign party. This includes disputes on patent infringement, invalidations and appeals to final rejections from the Patent Review Board (PRB) that were handled by the courts in 2016. These cases were further broken down by industry and by the nationality of the foreign party in order to provide a panoramic view of the foreign parties involved.

Additionally, we analyse the results of each judgment to illustrate the success rate of foreign parties. Some important issues (eg, inventiveness, hierarchy of evidence, usage of functional language and common knowledge) which were addressed by the courts at all levels are also examined in detail in order to provide additional insight on Chinese patent enforcement from a judicial perspective.

How did foreigners fare in patent litigation?

Both the white book issued by the Supreme People's Court and statistics issued by provincial courts failed to provide information on how many of the 12,357 patent cases in 2016 involved foreign parties. In an attempt to glean this information, we downloaded and scrutinised all 2,200 cases concluded patent trial cases on invention patents in the whole of China in 2016 from www.itslaw.com. We then analysed and classified these to determine how many had a foreign party and how they fared. We focused on invention patent disputes because there are simply far too many design and utility model infringement cases to analyse manually.

During the search, we focused on the names of both parties involved and used common sense and previous experience to decide whether a name was non-Chinese. Based on our search, only 248 of the 2,200 cases involved at least one foreign party (ie, 13% of the total). Among these, 166 were infringement cases, 36 were invalidation cases and 40 were appeals against PRB final rejections. The remaining six cases were related to patent licensing agreements, patent ownership and petitions to superior courts.

In China, patent infringement disputants are typically required to try mediation initially. If the parties are unwilling to negotiate or if the consultation is unfruitful, the patentee or interested party may then take legal action before a court.

For patent invalidation cases, the PRB shall examine the request to declare a patent invalid, make a decision and then notify the requesting person and the patentee of this. Any person who is dissatisfied with the PRB's decision may take legal action before a court, which shall then notify the opposing party in an invalidation procedure to participate in the litigation as a third party. As mentioned previously, the Beijing IP Court has jurisdiction at first instance for the judicial review of patent invalidation cases decided by the PRB.

If a patent applicant is dissatisfied with the State Council's Patent Administration Department's decision on an appeal of a final rejection by the PRB, it may file a request with the PRB for review. After review, the PRB shall make a decision and notify the applicant of this. If the applicant is still dissatisfied, it may take legal action before the Beijing IP Court.

The categories of case by industry is shown in Figure 3b. Among these 248 cases, 143 – more than 50% of all cases – involved the manufacturing sector. Given that China is often regarded as a manufacturing giant, it is unsurprising that a sizeable proportion of IP disputes stem from the manufacturing industry and occur between multinational corporations in this category. Of the remaining cases, 43 are from the life sciences and medical industry, 25 from the telecommunications industry, 18 from sales and retail, and 14 from the IT sector.

Some well-known international enterprises with a strong presence in the Chinese market were involved in multiple patent disputes with local companies in China. For instance, 3M Company was involved in seven disputes in the manufacturing, and bio and medical science sectors. Telecoms giants Qualcomm Inc and Samsung Group were involved in eight and 13 disputes respectively with Chinese telecoms enterprises, while French business conglomerate SEB Group took part in seven disputes in manufacturing. We also classified the entities involved in the litigation of invention patent disputes by nationality, of which the top 10 are shown in Figure 3c. Obviously, US entities ranked first,

with 68 or 26% of the total, distributed between the manufacturing, telecoms, IT, sale and retail, and life and medical science sectors. Companies from Germany and Japan ranked joint second, with 38 entities. The majority of these were involved in disputes in manufacturing with Chinese heavy industry enterprises. France ranked third, with 22 entities involved. The rest of the countries are: Korea (20), Netherlands (10), the United Kingdom (10), Switzerland (seven) and Finland (five). Famous enterprises such as 3M, Qualcomm, Samsung, SEB Group and Nokia are marked in Figure 3c as well.

In order to gain a true picture of Chinese patent enforcement and patent litigation cases involving foreign parties, we reviewed all 248 invention patent dispute case decisions involving at least one foreign party which it was possible to identify in detail. Each case is categorised according to first instance, second instance, last instance or others. This category includes issues such as the preservation of evidence before trial, applications for enforcement and disputes over jurisdiction (Figure 6). Foreign parties were classified as plaintiff, appellant, defendant or appellee in each case.

FIGURE 1. Number of new IP litigation cases in different provinces from 2013 to 2016

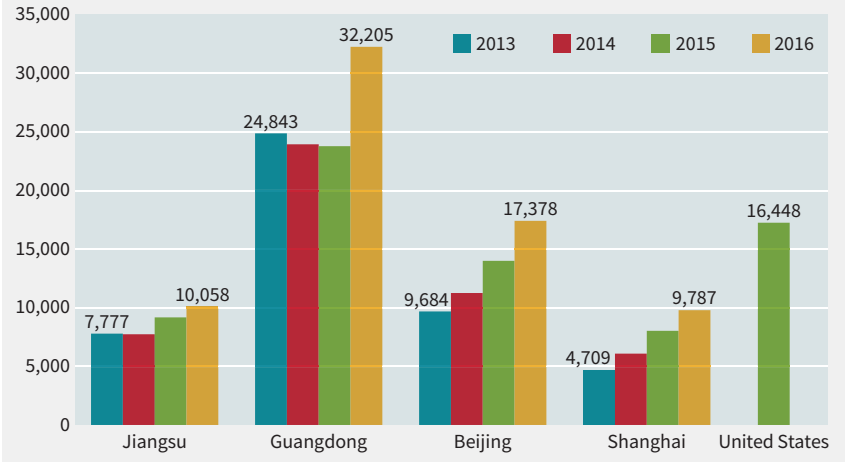
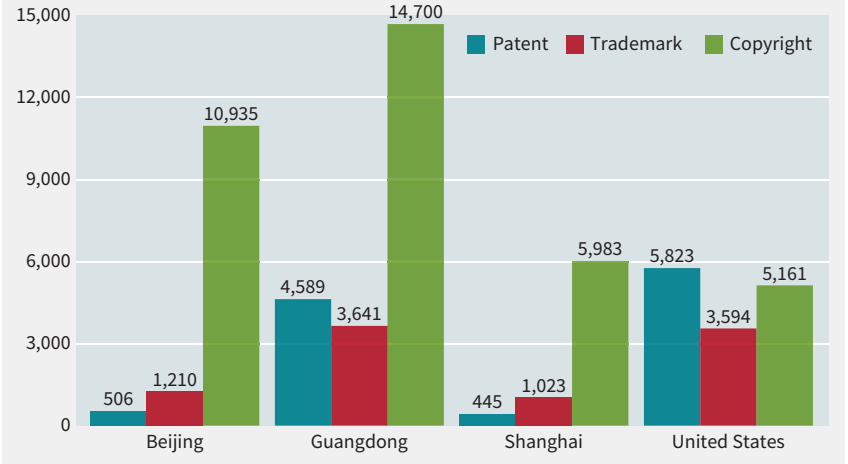


FIGURE 2. Patent, trademark and copyright litigation cases in 2015 (civil cases, first instance)



Invention patent dispute cases – infringement

In total, in 2016 there were 160 cases involving invention patent disputes distributed among the different provinces of China. Among these, both parties were foreigners in just six cases. The remaining 154 cases involved a foreign party and a Chinese party on opposing sides. As listed in Figure 4, there were 64 dispute cases decided at first instance, including 62 in which the foreign parties were plaintiffs. When foreign parties were involved as the plaintiff, they won 29 times, while the Chinese party won in eight cases. Twenty-four cases were settled through consultation between the parties. This means that the win rate of a foreign party at first instance in an invention patent dispute in China is approximately 78% when the opposing party is a Chinese company. Such a high rate does not support the common concern that there is a negative bias against foreign parties and that patent enforcement in China is particularly difficult for foreigners. On the other hand, the withdrawal of 24 cases does perhaps suggest that Chinese companies are willing to settle infringement disputes by consultation and are open to settlement discussions with foreign parties. This may correspond to the Chinese principle of emphasising harmony over confrontation; certainly it reflects the fact that Chinese courts have long favoured amicable settlements and have procedures in place to implement these.

FIGURE 3A. All invention patent cases involving foreign parties (all courts) in 2016

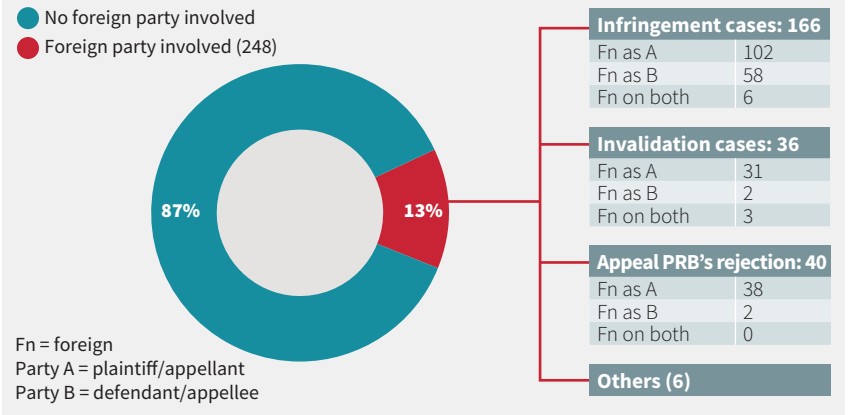


FIGURE 3B. All invention patent cases involving foreign parties (all courts) in 2016, by industry

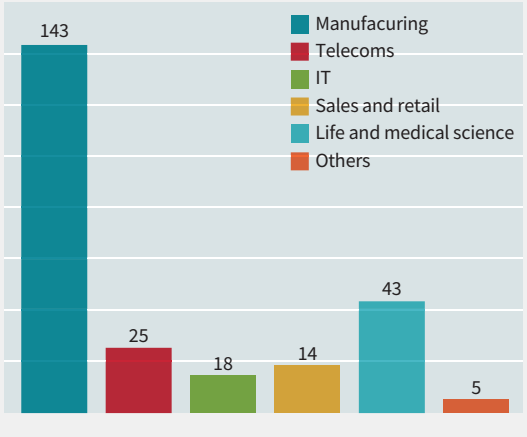
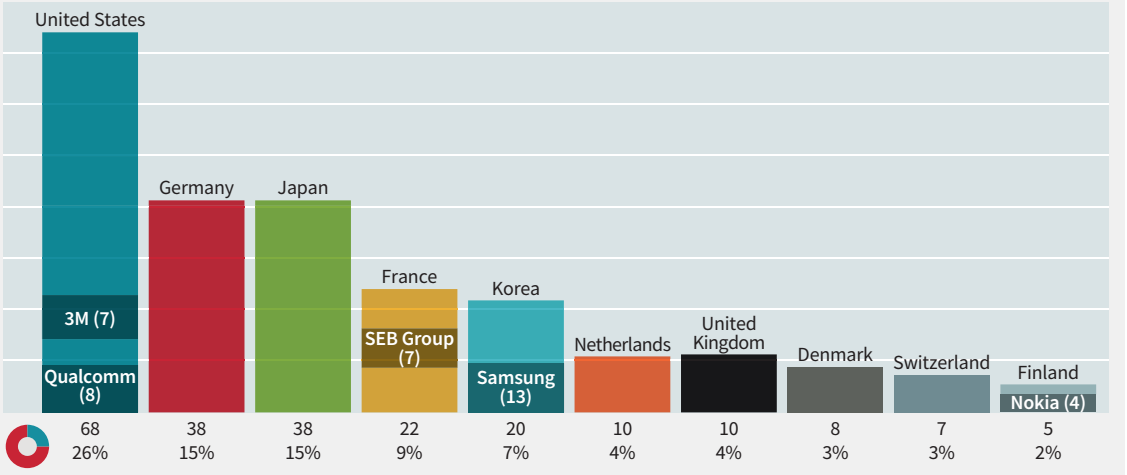


FIGURE 3C. All invention patent cases involving foreign parties (all courts) in 2016, by country



The statistics for court decisions for invention patent infringement disputes at second instance are shown in Figures 5. When foreign parties are involved as appellants at second instance, it suggests that they are appealing the court's decision because they were dissatisfied with the first-instance judgment. Normally, it is not easy to amend or commute an original first-instance judgment, since it is necessary to demonstrate a clear error in procedure or evidence recognition. In view of this, it is unsurprising that the foreign parties lost all of their appeals – a total of 27 cases. However, this figure does not indicate that the high courts are biased against foreigners; statistics also show that foreigners have high success rates when they act as appellees. In 43 cases the original judgment was affirmed, only two original judgments were amended, while one case was remanded for retrial. In other words, the same poor success rate is seen across the board for all appellants, regardless of whether they are foreign or Chinese entities. In fact, these statistics indicate that the chance of success is extremely low when a party appeals a lower court's decision after losing the patent litigation in the first instance, regardless of the appellant's nationality. If a foreign party loses in the first instance, it is difficult for it to win subsequently, even if it appeals to a higher court. On the other hand, if a foreign party wins at first instance and its opponent appeals to a higher court, it is just as difficult for the foreign entity to lose. We may thus conclude that the statistics offer no evidence of bias or prejudice against foreign parties.

In China, patent litigation typically starts at the intermediate court level and there is only one opportunity to appeal as a matter of right (ie, to a high court) – appeals to the Supreme People's Court are subject to approval. Figure 6 investigates the success rate of second-instance appeals to the Supreme People's Court. There were nine disputes in total that were accepted by the Supreme People's Court in 2016 according to our sources. In three of these, the foreign party was involved as appellant; in the other six it was involved as appellee. As the Supreme People's Court strongly influences the lower courts by issuing new regulations and judicial reforms, it is instructive to view

FIGURE 4. 2016 invention patent infringement disputes involving a foreign party (64 first-instance cases in total)

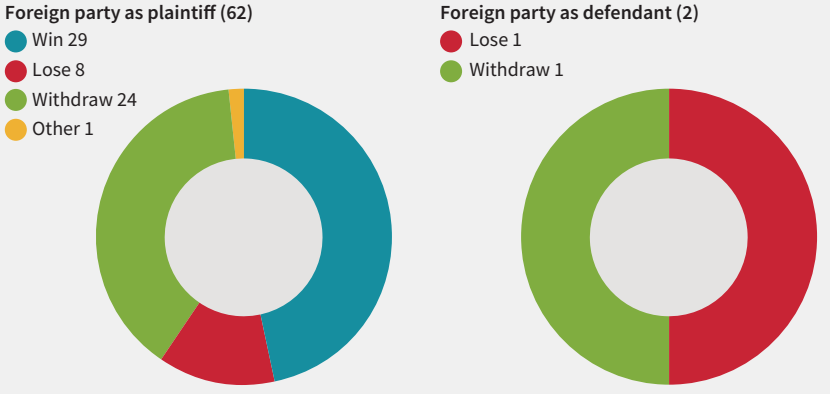


FIGURE 5. 2016 invention patent infringement disputes involving a foreign party (76 second-instance cases in total)

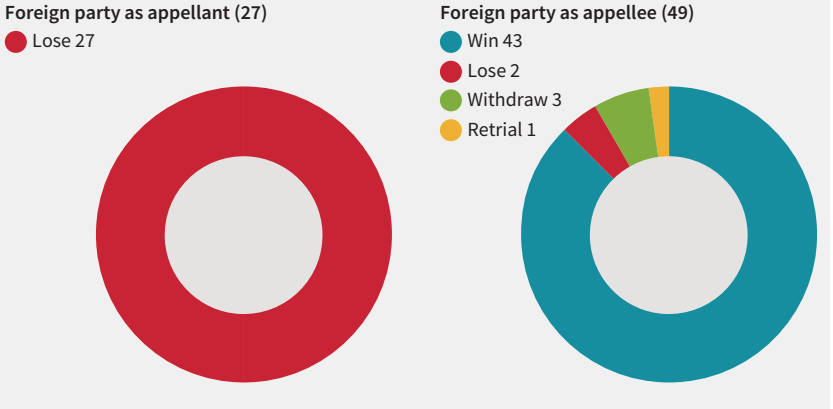
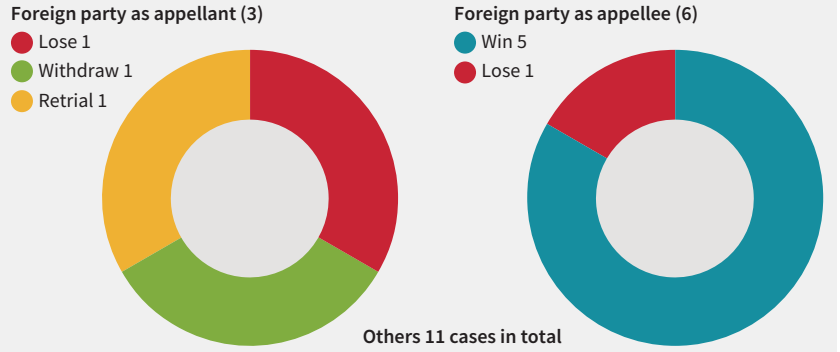


FIGURE 6. 2016 invention patent infringement disputes involving a foreign party (nine final-instance cases in total)



the cases and issues which it has heard. The three cases in which foreign parties were involved as appellants were:

- *Nokia v HUAQIN Telecom Technology Co*, which involved a Finnish and a Chinese company;
- *Shuanghuan Machinery Limited v Rex Cameron Lucas*, which involved a Chinese and an Australian company; and
- *Maschinenfabrik Rieter AG v TONGHE*, which involved a Swiss and a Chinese company.

In *Nokia* Nokia decided to withdraw the case after the infringed patent (200480001590.4) was declared invalid. In *Rex Cameron Lucas* the issues decided by the Supreme People's Court included how to determine equivalence in technical features and whether the amount of compensation was appropriate. The court disallowed requests from both parties for a new hearing and affirmed the original judgment. In *Maschinenfabrik Rieter AG* the related issues were technical features, claim scope and scope of protection. The foreign party's request was disallowed.

The Supreme People's Court upheld the lower court decision in these three instances but did reverse the original judgment in one case. Unfortunately, in this case the decision was unfavourable to the foreign party. As listed in Figure 6, one case was affirmed when a foreign party was involved as appellee. This dispute involved two cutting tool manufacturers, one Swiss and one Chinese. According to the Supreme People's Court, the legal basis for the reversal was that the technical feature of the alleged infringing process and the corresponding technical features of independent claim one were not the same and therefore fell outside the scope of the claim. It further restated the understanding that the scope of patent protection for the patent right of an invention or a utility model shall be confined to what is claimed, while the written description and the figures attached are used for claim interpretation only.

Table 1 shows statistics involving two foreign parties in invention patent infringement disputes. There are three cases in the first instance, one in the second instance and two cases in the final instance. These six cases relate mainly to three technical fields: mechanical components, information technology and chemical fields. The three first-instance cases were settled out of court. The decisions in the other cases affirmed the original judgment or ordered that they be reheard.

Invention patent dispute cases – invalidation

China subscribes to a bifurcated system of patent law in which any challenger to the validity of a patent first files an invalidation request with the PRB, which will issue a determination of validity accordingly. A person or a party dissatisfied with the PRB's decision may then appeal to the Beijing IP Court, which has exclusive jurisdiction over such appeals. If the court overturns the PRB's decision, the case will be remanded back to the PRB. In these successfully appealed cases, the judge will point out which laws or regulations have been incorrectly applied or interpreted in the PRB's decision. The PRB will then re-examine the case under the corrected understanding of the laws and regulations. Data published by www.itslaw.com in 2016 indicates that out of 248 invention patent dispute cases, 36 related to the appeal of PRB invalidation decisions before the Beijing IP Court.

TABLE 1. 2016 invention patent infringement disputes involving foreign parties on both sides

First instance (3)

Case	Plaintiff	Defendant	Result	Detail
Hitachi-Omron Corp v Nautilus Hyosung Inc	Japan	Korea	Withdraw	Cash deposit machine
Nagravision v Apple Inc	Switzerland	United States	Withdraw	Technology on TV
OpenTV Inc v Apple Inc	United States	United States	Withdraw	Technology on TV

Second instance (1)

Case	Appellant	Appellee	Result	Detail
Intematix Corp v Mitsubishi Chemical Corp	United States	Japan	Affirmed original judgment (JP wins)	Chemicals

Last instance (2)

Case	Appellant	Appellee	Result	Detail
Katoh Electrical Machinery Co, Ltd v Rich Admiral International Ltd	Hong Kong	Japan	Affirmed original judgment (JP wins)	Mechanical components
ZAMR v Rhodia Operations & Daiichi Kigenso Kagaku-Kogyo Co Ltd	Canada	France and Japan	Rehearing in separate cases	Chemicals

As illustrated in Figure 7, 12 of these 36 cases involved a foreign party in the first instance of judicial review. Only one foreign party successfully defended its patent at this instance, eight failed and three settled out of court.

The patentee of the successfully appealed case was ZUIKO Corporation from Japan. The PRB was involved as the defendant and an individual – Zhang Xueshou, who requested the invalidation of ZUIKO's patent (01139639.3) – was involved as the third party. This patent disclosed a rotating apparatus and a method for folding fabric. Zhang tried to invalidate ZUIKO's patent on the basis of three prior art documents. The claims of the ZUIKO patent were written in functional language, resulting in an invalidity decision by the PRB during re-examination for lack of inventiveness. In the Beijing IP Court decision, the court pointed out that many of the claims were written in functional language, which resulted in the scope of protection and the technical solutions being incorrectly understood and interpreted by the PRB during patent re-examination. When evaluating the inventiveness of the technical solution, the PRB made the invalidity decision based on conventional understanding in this field rather than the patent claim because of the abuse of functional language. The court stated that it is easy for the PRB to misunderstand technical features and structures which were claimed in the patent, thereby affecting its decision on inventiveness. Further, it pointed out that the claims should not only clarify and succinctly define the scope of patent protection but also rationally and adequately summarise the content of the technical solution based on the specification. The deliberate use of functional language in claims to obtain an inappropriate scope of protection should be prohibited. On the other hand, the court pointed out that the technical problem solved in the claim, if correctly understood, was not substantially the same as the cited prior art and the two had no corresponding relationship. Accordingly, the PRB should rectify its erroneous decision by re-examining the inventiveness of the claim on the basis of the correct understanding. The case was remanded back to the PRB for further re-examination. The third party, Zhang, appealed to the Beijing High Court but this upheld the Beijing IP Court's decision.

Any party that is not satisfied with the Beijing IP Court decision on invalidation in the first instance may appeal the decision to the Beijing High Court. In the data we examined, there were 14 concluded cases related to patent invalidation disputes in the second instance (Figure 8). In 13 of these, the appellant was a foreign party which appealed the original decision; three of the appeals succeeded, while 10 failed.

The three successful cases are:

- *Daiichi Sankyo Company Limited v PRB & Hua Xia Sheng Sheng Da Yao Fang*;
- *Microchip Technology Inc v PRB & Shanghai Haier Integrated Circuit Co, Ltd*; and
- *Nokia v PRB & Huaqin Telecom Technology Co, Ltd.*

In *Microchip Technology Inc* the US company successfully revised the PRB's invalidation by challenging the use of common knowledge as the basis for the decision of inventiveness. The patent at issue was Chinese utility model ZL200620046587.0, which is owned by Shanghai Haier Integrated Circuit Co, Ltd. The technical field was circuit design, specifically a microcontroller circuit for generating a clock signal. Microchip Technology Inc tried to invalidate this patent before the PRB but failed. It then appealed the PRB's decision to the Beijing Intermediate Court but failed again. Microchip continued to appeal the decision to the Beijing High Court and finally received a favourable judgment. The court pointed out the contradiction in the PRB's invalidation decision. On the one hand, the PRB considered that "the operating mode control circuit for controlling the operating mode of the external clock" is common general knowledge in the art and did not need to be described in detail in the specification. On the other hand, it also ruled that because of this technical feature, the patent had the necessary inventive step. Obviously, there is a logical contradiction between the sufficiency of disclosure and inventiveness of this patent. Therefore, the PRB should re-evaluate Haier's patent and determine whether there is an issue with either insufficiency or inventiveness.

In *Nokia* the Finnish company appealed the invalidation of CN 95190620.8 (the Nokia patent) to the Beijing High Court. The patent discloses the method and apparatus for speech transmission in mobile communication systems. Huaqin, acting as third party, tried to invalidate Nokia's patent by challenging claim one for its lack of a clear and concise definition. In particular, it argued that the limited correspondence between the channel encoding method and the speech coding method in claim one was unclear. This challenge was not accepted by the high court. According to its decision, claim one included the limitation "each channel encoding method specific for said respective speech coding method". Meanwhile, the specification and drawings further

FIGURE 7. 2016 invention patent invalidation disputes involving a foreign party (12 first-instance cases in total)

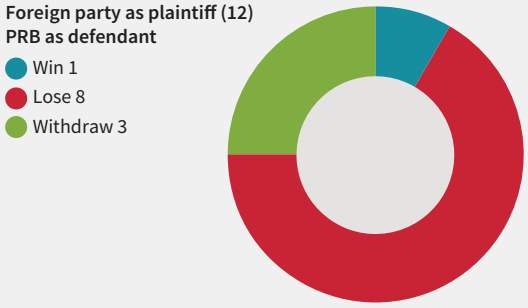
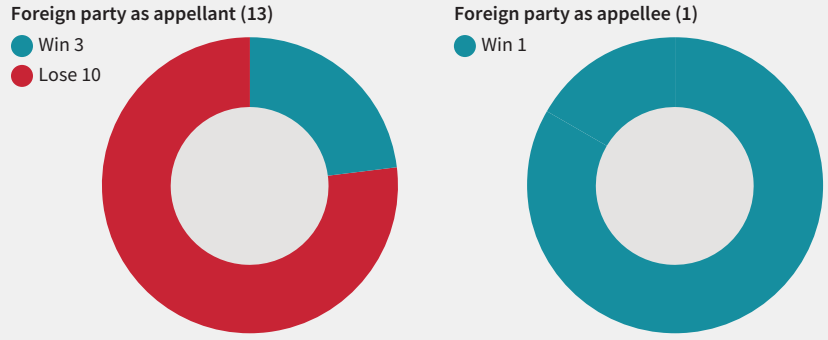


FIGURE 8. 2016 invention patent invalidation disputes involving a foreign party (14 second-instance cases in total)



supported that the technical feature defined in claim one was that each channel encoder correlated to each speech encoder with one-to-one correspondence. Since the claim, specification and drawings described the same technical feature clearly, the PRB should re-evaluate Nokia's patent based on the court's interpretation.

There was one case in which a foreign party was involved as the appellee in the second instance (Figure 8), making the appellant the PRB or a third party related to the previous judgment – the case was the second trial of *Zhang Xueshou v ZUIKO Corporation*. The third party, Zhang, appealed the judgment of the Beijing IP Court. The Beijing High Court accepted and heard the appeal, affirming the original judgment.

Available data further suggests that as an invalidation case is appealed to the final instance, the chances of success continue to diminish. From our sources we found a total of 21 cases relating to patent invalidation which were appealed to the Supreme People's Court in 2016. As shown in Figure 9, seven of those had at least one foreign party involved. In six of the seven, the foreign company was the appellant, while in one case the foreign party was involved as the appellee. The issues concerned in these cases were diverse and included creativity, novelty, invention disclosure, reasons of patent invalidation and protection of claim scope. The results are similar to the infringement dispute cases examined above. Except for one foreign party, which withdrew its appeal during the litigation, the original judgments remained unchanged. The data appears to indicate that it is difficult to commute any original decision made by the PRB, even if the party succeeds in taking the case all the way to the Supreme People's Court.

Among the invalidation disputes described above were three disputes in which both parties were foreign entities. These were *First Engineering Aus & PRB v Zimmer AG* (both from Austria), *Bae Yeong Sik v SONY* (with the PRB as the third party) and *Wuzhou IPR consultant v PRB & Delta Electronics, Inc*. The three disputes were all heard at second instance. All three published judgments were summary affirmations of the original judgments and provided no further details. The issues under examination included the modification of the specification, claim scope, novelty and creativity. In *First Engineering Aus* the Supreme People's Court emphasised that amending the invention or utility model patent application documents did not exceed the scope specified in the original written descriptions and claims. It also restated that when compared with the existing technologies, the invention possessed prominent substantive features and indicated remarkable advancements.

Invention patent disputes – appealing final PRB rejections

According to data released at a press conference on January 20 2017, the State Intellectual Property Office (SIPO) received over 130,000 applications for invention patents from foreign entities in 2016, a new record. If a patent application is finally rejected, the applicant's only recourse is to file a request with the PRB for review. If the PRB's review decision is still unsatisfactory, it may take legal action before the Beijing IP Court. The available data indicates that in the 248 invention patent dispute cases studied, 40 related to appeals of final rejections by the PRB.

As illustrated in Figure 10, there were a total of 19 cases in the first instance, with four successful appeals, 12 failures and three withdrawals, indicating that although the patent application may be rejected during prosecution, there are still opportunities to re-open prosecution through judicial appeal. Meanwhile, unsuccessful parties can appeal to the Beijing High Court in the second instance.

As shown in Figure 11, the available data demonstrates that 16 concluded cases related to final rejections were heard in the second instance in 2016. Foreign parties were the appellants in 14 of these cases,

FIGURE 9. 2016 invention patent invalidation disputes involving a foreign party (seven last-instance cases in total)

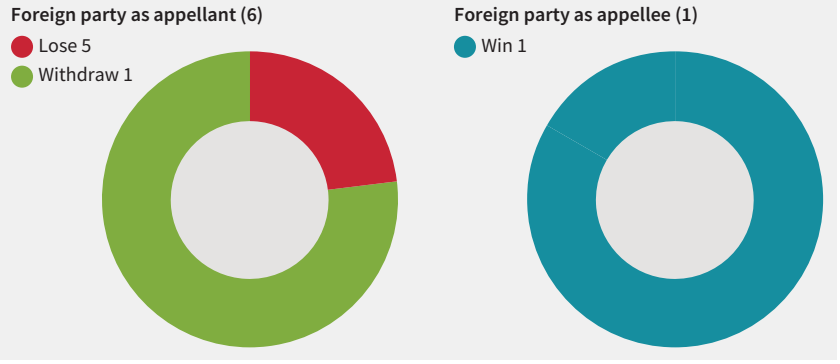


FIGURE 10. 2016 appeals of PRB final rejections of invention patents (19 first-instance cases in total)

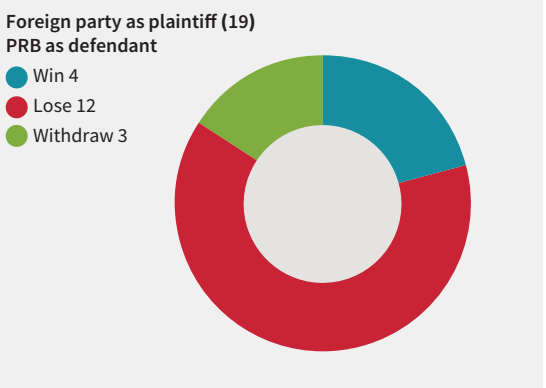
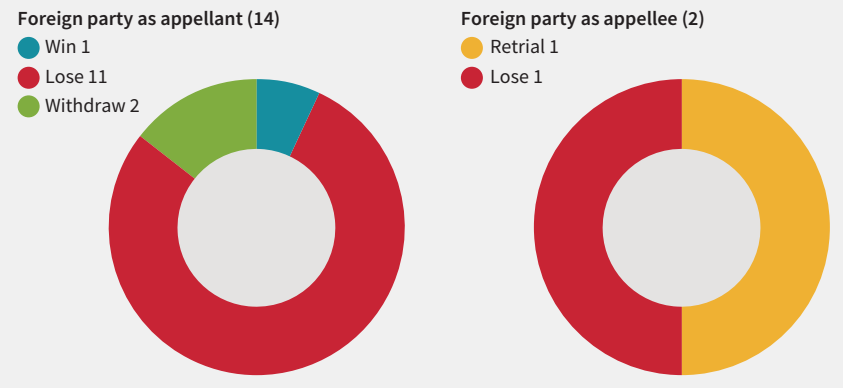


FIGURE 11. 2016 appeals of PRB final rejections of invention patents (16 second-instance cases in total)



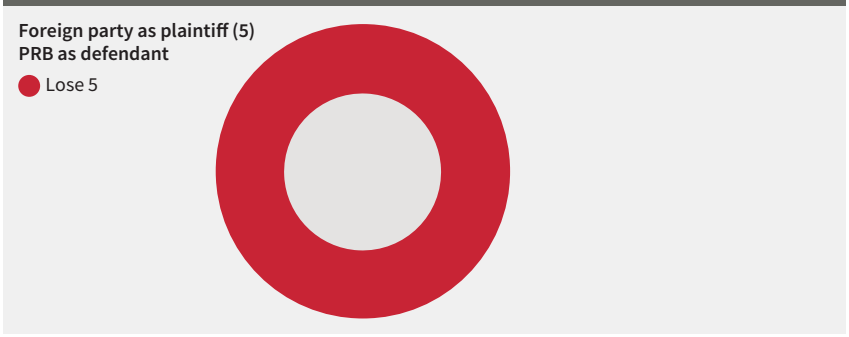
appealing the court decision in the first instance (in some instances, the legal proceedings had taken so long that the first-instance court was the Beijing Intermediate Court because the Beijing IP Court had not yet opened for business). One of the appeals was successful, 11 were unsuccessful and two were withdrawn. Meanwhile, there were two foreign parties involved as appellees – in *PRB v Halla Visteon Control Co, Ltd (HVCC)* and *PRB v E I du Pont de Nemours and Company*, which involved a Korean and a US company, respectively. This means that in some circumstances the PRB may not have been satisfied with the decision of the Beijing IP Court and may have appealed to the Beijing High Court.

In *HVCC* the original decision at first instance was overturned and a retrial ordered by the Beijing High Court at the Beijing IP Court. The issue in this case was the inventiveness of patent application 201110181422.X, which disclosed a double pipe type heat exchanger and method for manufacturing. The high court stated that by combining two relevant documents those skilled in the art would be able to arrive at the distinguishing features disclosed in claim one with no creative work and therefore the patent was invalid. The judgment of the Beijing IP Court was revoked and the PRB was ordered – on the basis that claim one contained no inventiveness – to rehear this case and decide whether the other claims have inventiveness. The rehearing is still pending.

The PRB succeeded in its appeal in *E I du Pont de Nemours*. Previously, the Beijing IP Court overturned the original PRB invalidation decision for patent application 200680040913.X; the PRB then appealed this to the Beijing High Court. The technical field was in chemistry. DuPont's patent discloses azeotrope compositions comprising E-1,3,3,3-tetrafluoropropene and hydrogen fluoride and its uses. Again, the high court raised the issue of inventiveness, stating that the technical solution of claim one is apparent from the technical solutions in the art; therefore claim one is insufficiently inventive. Also, the prior art disclosed how to obtain the formulation of the azeotrope, thus supporting the PRB's invalidation decision. Another important issue is the hierarchy of evidence for interpreting claims. In its judgment, the high court states that when interpreting terms in a claim, intrinsic evidence (eg, claim language and definitions in the specification) takes precedence over extrinsic evidence (eg, general meaning in the technical field). In this case, the patentee tried to restrict the term E-HFC-1234ze by defining it with intrinsic explanations in the specification. However, since the explanation of this term was unclear, it would not be apparent to those skilled in the art that the particular limit may be determined by the intrinsic explanation. As cited by the Beijing High Court in the published judgment, when intrinsic evidence is insufficient to determine the meaning of a term, extrinsic evidence should be used. Since the term has a general meaning in the field to those skilled in the art, the understanding of it should be given its broadest reasonable interpretation. It was because of this broad interpretation that the claims were deemed to read on the prior art.

Although the cases appealed by the PRB are not precedential and the sample size is not statistically significant, they do suggest that the PRB takes a strong stance if the Beijing IP Court overturns its decisions on technical grounds (eg, inventiveness and claim interpretation) and the PRB will likely appeal such decisions. Therefore, when appealing to the Beijing IP Court, rights holders should consider what issues to raise. If the main issue raised is a technical one (eg, inventiveness or the technical aspects of the claim scope), then even if it wins the appeal in the Beijing IP Court, the PRB is likely to appeal the decision to the Beijing High Court. Thus patentees should expect protracted legal actions with the PRB for such cases.

FIGURE 12. 2016 appeals of PRB final rejections of invention patents (five last-instance cases in total)



When a final rejection is appealed to the Supreme People's Court, the likelihood of a decision being commuted is quite rare according to our sources. The five cases which were appealed to the Supreme People's Court are shown in Figure 12. The results are similar to the infringement dispute cases we examined previously (ie, the original judgments changed only rarely). It is difficult to commute an original judgment, even if one appeals to the Supreme People's Court. The issues discussed in these cases included novelty, inventiveness, invention disclosure and claim scope.

Conclusion

It is fair to conclude that Chinese patents are indeed enforceable. It is thus time to dispel the longstanding notion that foreign parties receive prejudicial treatment when trying to enforce their patents in China – perhaps caused by the skewing of IP enforcement data due to the high number of copyright and trademark infringement cases. Our review of case statistics and judgments clearly shows that foreign entities looking to enforce their patents were not subject to unfair treatment or bias by the courts. However, if a foreign party lacks the understanding of the specific requirements of the Chinese legal system when planning enforcement strategies (eg, in terms of evidence collection and time lines in litigation), then its ability to enforce its patents will be markedly compromised. The difficulty of evidence collection is indeed one major hurdle facing patentees trying to enforce their patents in certain technologies but this is true across the board, regardless of whether the patentee is a Chinese or a foreign corporation.

In addition, the reality is that foreign applications must be translated for filing in China, while their Chinese counterparts are drafted in Chinese. Clearly the need for translation is a disadvantage as any ambiguity or misunderstanding resulting from this process could affect the quality of the resulting Chinese patents. In fact, translation problems may be one factor behind the relatively low number of foreign-originating patent

Action plan

A review of court decisions from across China involving foreign parties in patent litigation illustrates several trends and lessons for international patent owners crafting their China enforcement strategies:

- The overwhelming majority of Chinese patent litigation involves local entities only. Most litigation involving foreigners was based on a dispute with a Chinese party.
- The largest share of foreign-involved cases were on infringement. Smaller numbers of cases involved appeals of invalidations or final rejections by the patent office; a mere handful stemmed from licence disputes.
- It is difficult to get an intermediate people's court decision overturned by a higher people's court – this goes for both Chinese and foreign appellants.
- China's Patent Re-examination Board takes a strong stance when its decisions are overturned by the Beijing IP Court and will likely appeal such decisions.
- Although there are only a small number of cases, an examination of win rates shows that there is no apparent general bias against foreign parties in Chinese patent litigation.

litigation. It is therefore imperative that a good translation be used to file a patent application. Ideally, the translation should be reviewed by the patent attorney who will be prosecuting the case before the application is filed. Any ambiguity or inconsistency should be proactively discussed with the original foreign patent attorney to ensure that the meaning is as originally intended.

IP enforcement is a two-edged sword. Improving the enforcement environment in China will make it easier to enforce both foreign and locally owned patents. Foreign companies must therefore wake up to the fact that the Chinese government's efforts to improve enforcement have resulted in rising awareness by Chinese entities and individuals of the value and importance of patent protection to their own business and commercial success. The effects of this are apparent in the formidable number of patents being applied for and granted to Chinese entities relative to their foreign counterparts. According to statistics issued by SIPO, over 1.2 million applications were filed by Chinese residents in 2016. The government is trying to grow this number to 2.5 million in the next five years. One of the reasons for these high numbers is the picket fencing strategy that is often applied by Chinese companies to limit the practising scope of a competitor's broader or more basic patents. In the long run, it would be unsurprising if a foreign entity that might have developed an original technology is blocked from producing its own if it is unaware of the IP portfolios that its Chinese counterparts are amassing. It is therefore imperative that foreign companies formulate their own defensive filing strategies in China through a dynamic, forward-looking and targeted IP programme tailor-made for the Chinese market. iam

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