

Strategy for Patent Infringement Influence in China by Filing for
Patents in Other Countries
by Adrian Lee

China cannot be ignored when designing a sophisticated international patent filing strategy. China has a population widely estimated to be about 1.4 billion people, thereby being the most populous country in the world. [1] China has the second largest economy in the world measured by GDP. [2] Despite criticisms of patent enforcement systems in China, [3] sheer economic gravity often warrants filings of patents in China in many circumstances.

However, for those worried about potential enforcement issues in China, there are other options that can be used in addition to, or even potentially as an alternative to, filing in China. These options stem from the recognition that for many products, China represents only a portion of the total stream of commerce. For instance, products assembled and/or consumed in China often use essential parts that are manufactured in other countries. Products produced in China likewise are often shipped to customers in other countries.

Thus, when evaluating international patent filing strategy with the aim of mitigating future infringement within products manufactured and/or consumed in China, on the supply side of the chain, it is helpful to determine what essential components would be required in such a potentially competing product. Then, one can identify which countries 1) have the technical capacity and infrastructure to economically manufacture such components in volume, and 2) have a sophisticated and reliable patent enforcement system. Patent applications may then be crafted with claims that read on those essential components, for filing in those identified countries. By so doing, the patent owner has a potentially powerful tool to deny Chinese assemblers, importers, distributors, wholesalers, and retailers of the essential parts needed to keep their supply chain free of disruption. On the demand side of the chain, it is helpful to identify which countries that 1) China is likely to export such products to, 2) have a substantial economic purchasing power and demand for such products, and 3) have or are likely to have a sophisticated and reliable patent enforcement systems.

As an example, China is a prolific manufacturer of electronic and computer equipment. Suppose that such assemblers rely heavily upon electronic components manufactured in Korea and Japan. It might make sense to file patent applications that have claims directed towards those essential parts in Korea and Japan, which do have well developed and reliable

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patent enforcement systems in place.

Finally, while this blog entry focuses primarily on China, the principles could just as easily apply to the targeting of potentially infringing products assembled or consumed in any country of interest. Even if that country already has a sophisticated and reliable patent enforcement system, coverage of multiple points in the likely stream of commerce provides for more pressure points to prevent infringement through ceasing of infringing activity, and/or through proper licensing.

[1] See https://esa.un.org/unpd/wpp/Publications/Files/Key_Findings_WPP_2015.pdf, page 13

[2] See “*World Economic Outlook Database*”. International Monetary Fund. October 2016.

[3] It is not within the scope of this blog entry to opine on the merits of such criticisms.