

Are NPEs Coming to China

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When Did NPE Go To China

- 2005 or slightly before
- Acquiring Chinese Patents vs. Acquiring Chinese invention ideas
- No Patent NPE litigation found in China - yet
- Intellectual Property concept was introduced to China, China plays a more “follower” position

China Investment Environment for NPEs

- Setting up a Patent Pool
- New to Chinese Investors
- Foreign investors faced constrains on investment amount as well as “policy” bottle neck
- Damage Calculation

Thoughts – Three Possibilities

- NPEs and PEs to include China as a battlefield in a multi-nation patent war ” - Roger Sang: “Are NPE Coming to China”
- Foreign (global) entities will likely become initial targets of Chinese or none Chinese NPE in China;
- Main “Gain” of an NPE does not seem to come from damage (how to make a NPE profitable in China still needs some creative thinking);
- Initial NPE setups may have foreign investment, but the most successful model which will appear a bit later will be domestic business model

Some Numbers from 2010

Patent Filing:

- Total # of filings: 1.22 millions (9.2% by foreign Co.)
- Total # of granted: 815K (9.1% to foreign Co.)
- Total # of PCT filings: 13K (61% increase)
- Average # of claims/patent: Chinese: 6; foreign: 17
- Average # of pages/appln: Chinese: 9; foreign: 29

Patent Litigation:

- First instance patent cases: 5,785 (copyright: 24,719)
- Criminal IP cases: 3,992
- Preliminary Injunction: 55 (90% success rate)
- Preliminary Preservation of Evidences: 294
- Preliminary Preservation of Assets: 126

Trend of Patent Enforcement in China

- **Numbers of litigations are growing (based on 2010 data)**
 - First instance patent cases: 5,785
 - Preliminary Injunction: 55 (90% success rate)
 - Preliminary Preservation of Evidences: 294
 - Preliminary Preservation of Assets: 126
- **Damage awards are increasing**
 - Historically low, 90% IPR cases <\$100k, with average \$15K
 - More cases with big awards
 - Domestic winning: Schneider (\$50m); FKK (\$7.6m); Samsung (\$7.5m)
 - Foreign winning: Neoplan (\$3.2m); Ashland (\$3.5m)
- **Injunctions are available**
 - Preliminary few
 - Permanent common
- **Practical challenges for patentees**
 - Damage calculations can be tricky
 - Patentee's actual losses
 - Infringer's profit gains
 - Reasonable multiple of royalty
 - Statutory damage up to 1 million RMBs (~\$150K)
 - Evidence gathering is the key
 - Preservation
 - Collection
 - Accounting audit



Thank You!

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