

CHINA :

IPR, a national priority

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World Intellectual Property Day

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Haaga-Helia - Helsinki

Context:

Debate about the violation of IPR by China, accused by US President

International pressure for a better protection of foreign IPR

Chinese IP regime:

A more and more sophisticated IP regulation

Progress in implementation and effectiveness

Summary:

- I. China leader of IPR applications and grants
- II. A national priority policy
- III. Strengthening of the effectiveness of IPR
 - 1) A re-organization of the administration of IP
 - 2) A development of a IP specialized justice
 - 3) An improvement of the IPR rules

I. China, leader for IPR applications and grants

Since 2010, China is becoming the first country for IP applications and grants (patents, trademarks, industrial designs):

Patents:

In 2011, n°1 for patent applications

In 2014, n°1 for patent grants

In 2019, n°1 for Patent Cooperation Treaty International applications

China became n°2 (USA n°1) in 2018 for patents in force

China's patent and trademark office are the most active in the world

In 2019, China received 1,400,661 invention patents applications

USA received 616,852 utility patent applications

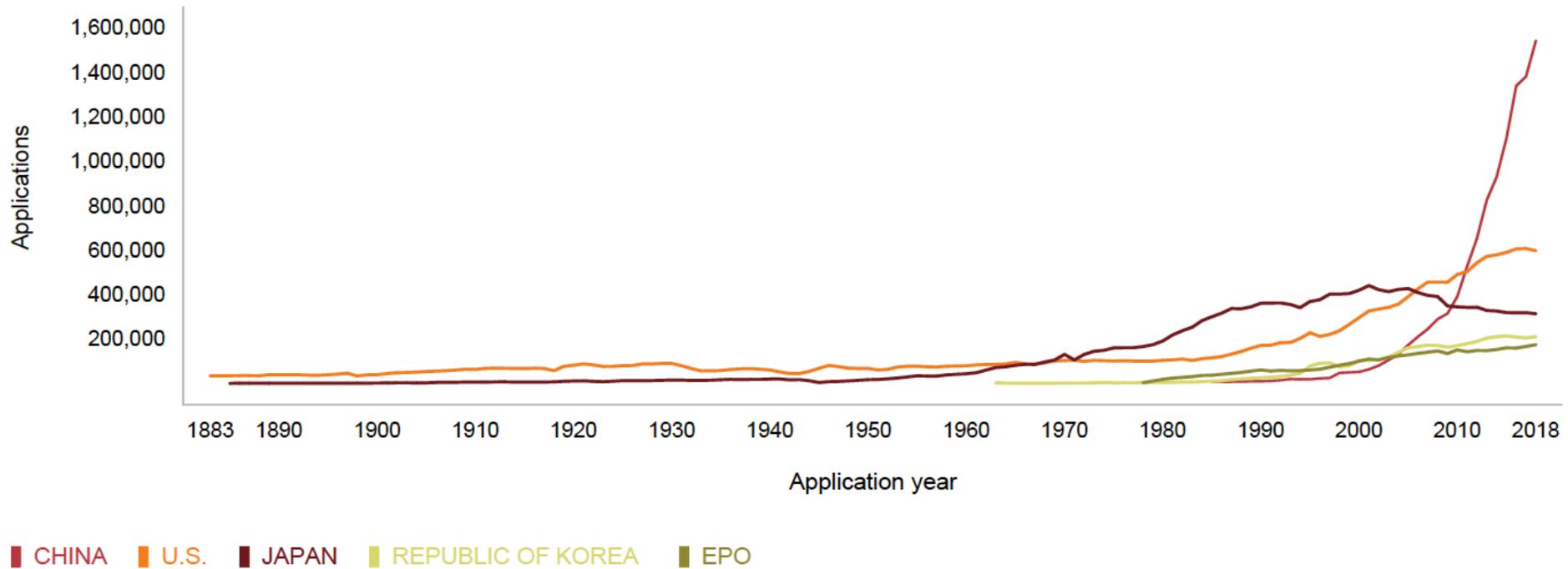
(comparable to Chinese invention patents)

In 2019, China: 7,837,441 trademark applications

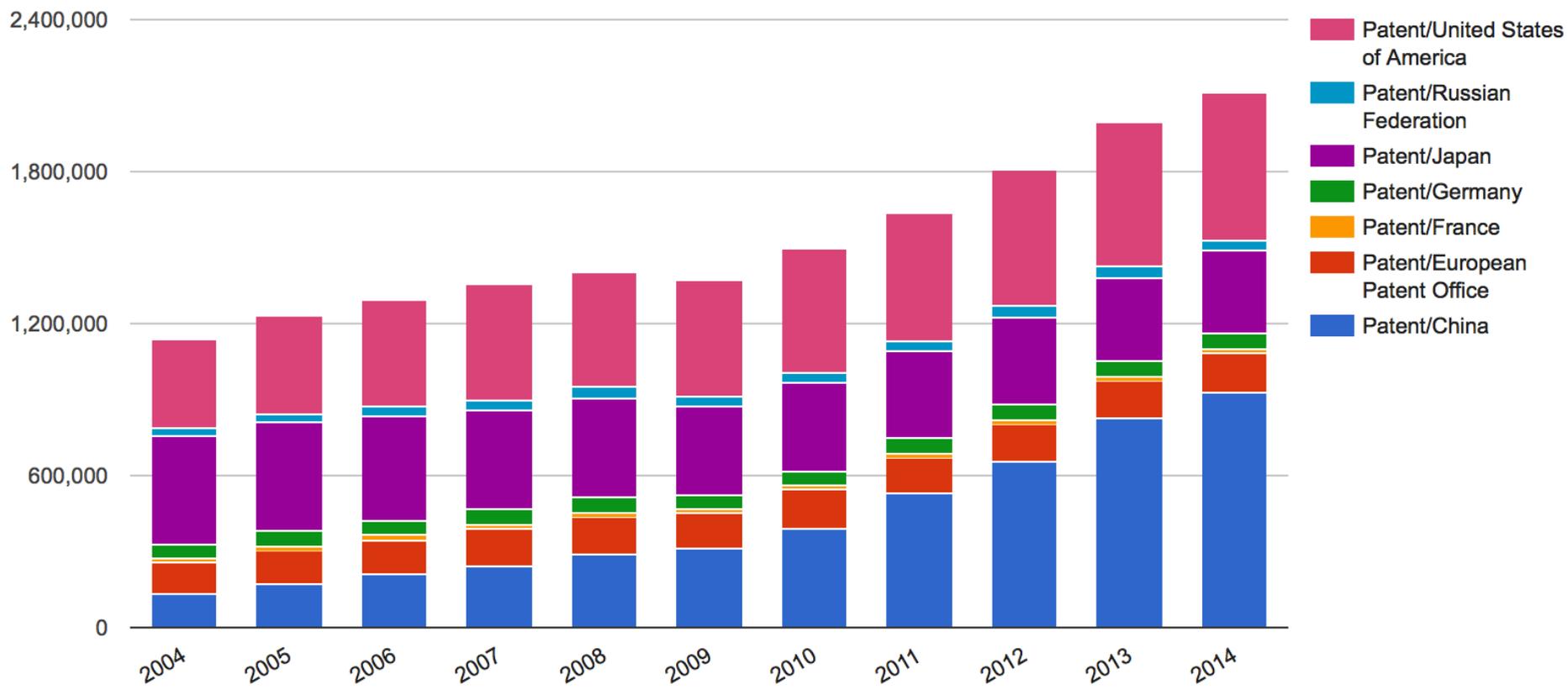
USA: 673,233 trademark applications

Evolution since 1883

Trend in patent applications for the top five offices, 1883–2018



Note: The IP office of the Soviet Union, not represented in this figure, was the leading office in the world in terms of filings from 1964 to 1969. Like Japan and the U.S., the office of the Soviet Union saw stable application numbers until the early 1960s, after which it recorded rapid growth in the number of applications filed.



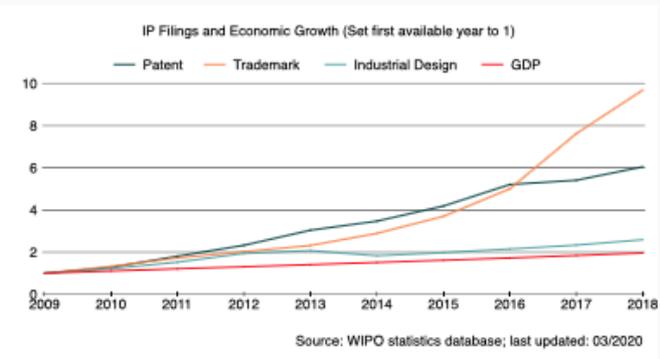


China

Population (Million): 1,392.73 (2018)
 Gross Domestic Product (Billion US\$)(Constant 2011 US\$ (PPP)): 22,543.83 (2018)

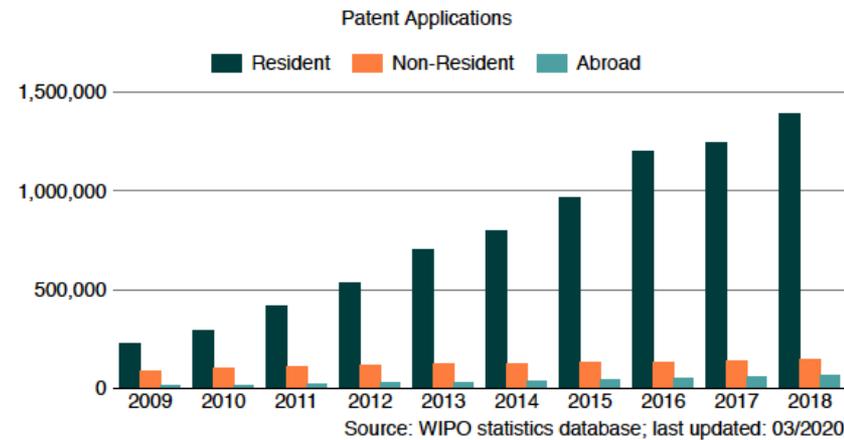
IP Filings (Resident + Abroad, Including Regional) and Economy

Year	Patent	Trademark (class count)	Industrial Design (design count)	GDP (Constant 2011 US\$)
2009	241,435	838,071	369,631	11,484.16
2010	308,327	1,113,120	448,121	12,705.63
2011	436,168	1,445,916	563,868	13,919.13
2012	561,404	1,694,024	718,127	15,013.12
2013	734,093	1,940,908	765,242	16,179.44
2014	837,814	2,422,084	677,318	17,360.46
2015	1,010,524	3,100,283	730,548	18,559.25
2016	1,257,425	4,192,656	794,092	19,809.53
2017	1,306,080	6,388,344	862,625	21,148.06
2018	1,460,244	8,118,135	957,241	22,543.83



Patent Applications

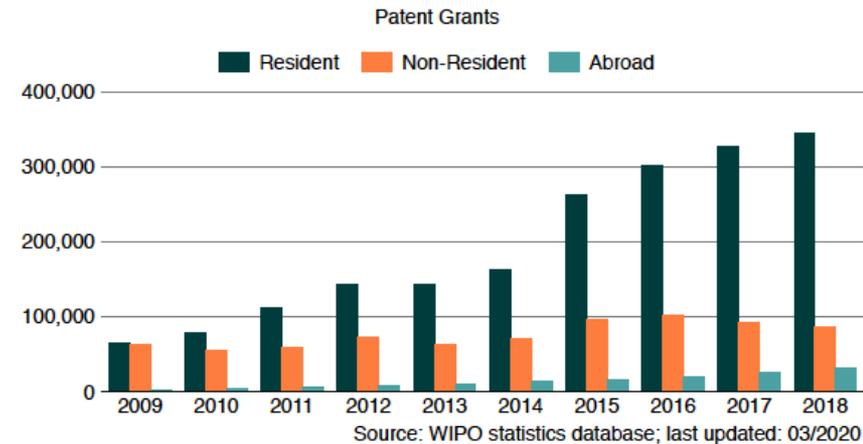
Year	Resident	Non-Resident	Abroad
2009	229,096	85,508	12,339
2010	293,066	98,111	15,261
2011	415,829	110,583	20,339
2012	535,313	117,464	26,091
2013	704,936	120,200	29,157
2014	801,135	127,042	36,679
2015	968,252	133,612	42,272
2016	1,204,981	133,522	52,444
2017	1,245,709	135,885	60,371
2018	1,393,815	148,187	66,429



In 2018, China received 46.4% of all patent applications filed worldwide

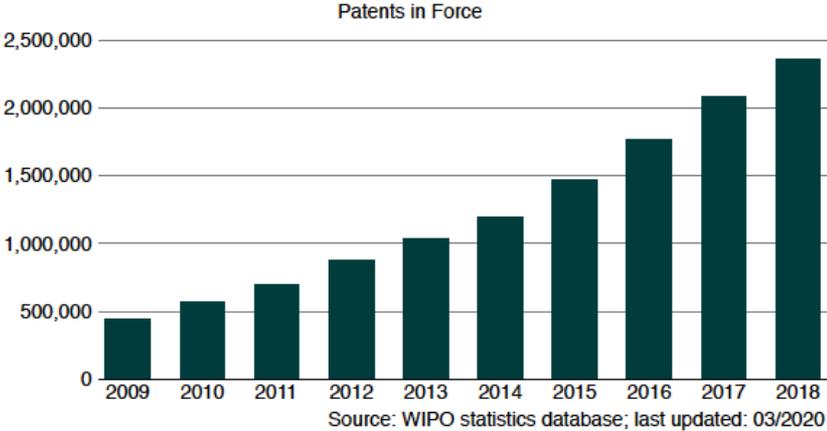
Patent grants

Year	Resident	Non-Resident	Abroad
2009	65,391	62,998	3,109
2010	79,767	55,343	5,047
2011	112,347	59,766	5,781
2012	143,808	73,297	8,288
2013	143,535	64,153	10,935
2014	162,680	70,548	13,665
2015	263,436	95,880	16,072
2016	302,136	102,072	20,380
2017	326,970	93,174	25,597
2018	345,959	86,188	31,346



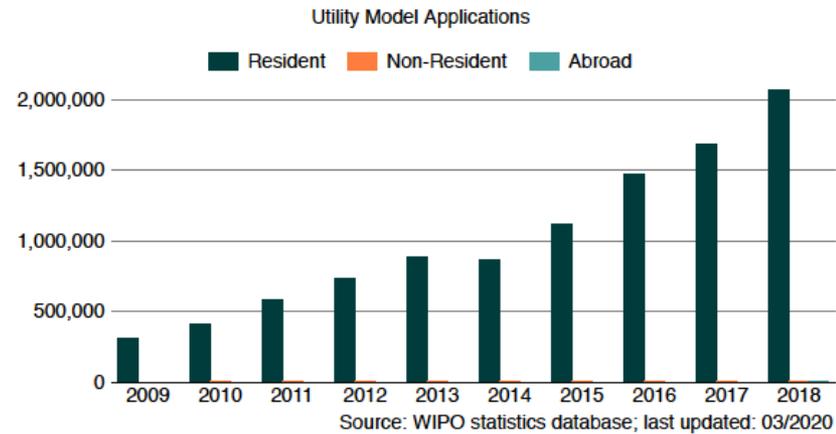
Patents in Force

Year	Patents in Force
2009	438,036
2010	564,760
2011	696,939
2012	875,385
2013	1,033,908
2014	1,196,497
2015	1,472,374
2016	1,772,203
2017	2,085,367
2018	2,366,314



Utility Model Applications

Year	Resident	Non-Resident	Abroad
2009	308,861	1,910	624
2010	407,238	2,598	752
2011	581,303	4,164	849
2012	734,437	5,853	1,119
2013	885,226	7,136	1,387
2014	861,053	7,458	1,445
2015	1,119,714	7,863	1,583
2016	1,468,295	7,682	1,710
2017	1,679,807	7,786	1,850
2018	2,063,860	8,451	3,044



PCT: an illustration of the international IP policy of China

China : 58,990 applications filed in 2019

USA : 57,840 applications in 2019 (n°1 since 1978)

China overtook USA as the biggest user of the PCT System

WIPO received 276 applications from China in 1999

A 200-fold increase in 20 years

In 2019:

For the third year in a row, Huawei was the main filer

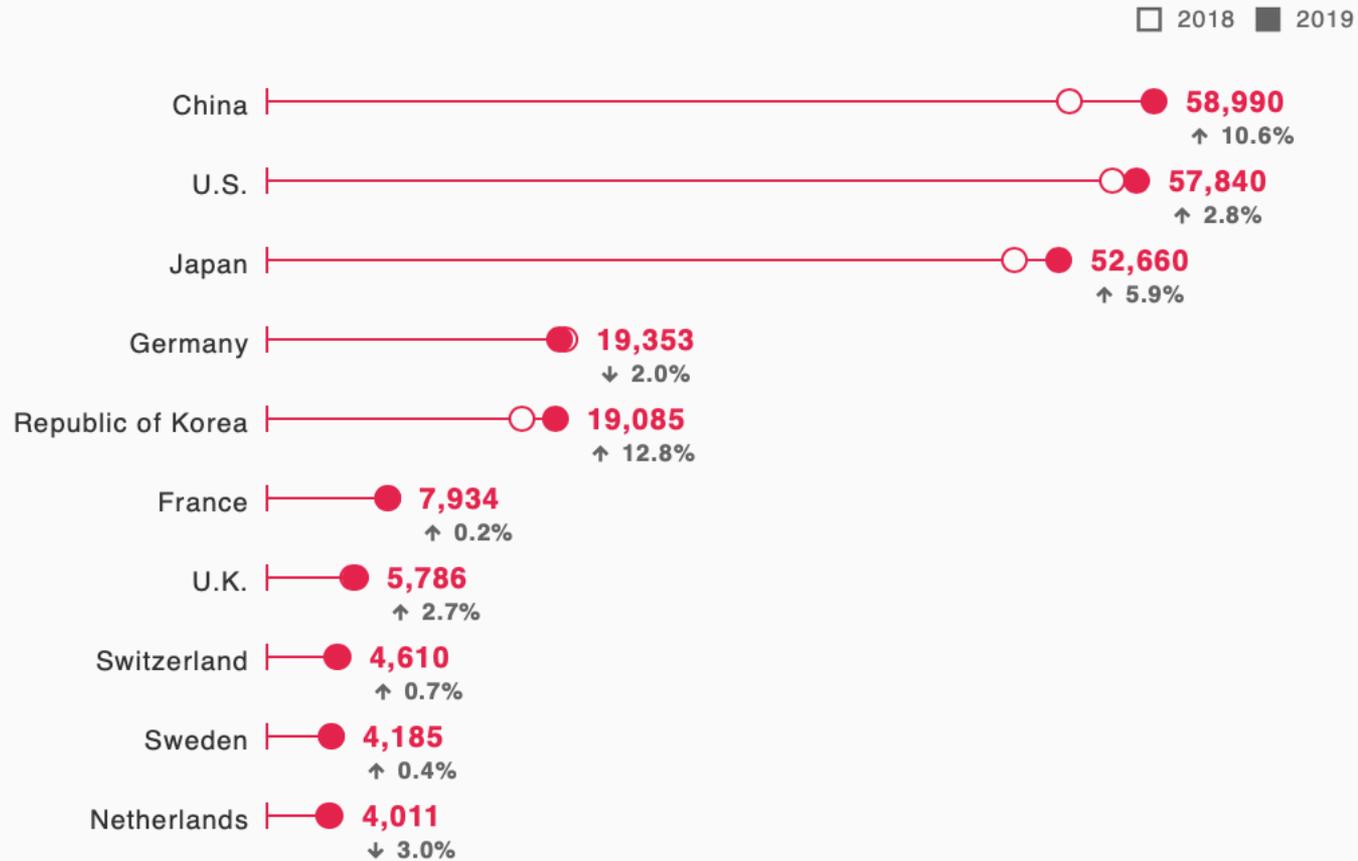
Four chinese companies are in the top 10 filers

PATENTS AND UTILITY

MODELS ▾

PCT top 10 countries

WHICH COUNTRIES ARE THE BIGGEST USERS OF THE PCT SYSTEM?

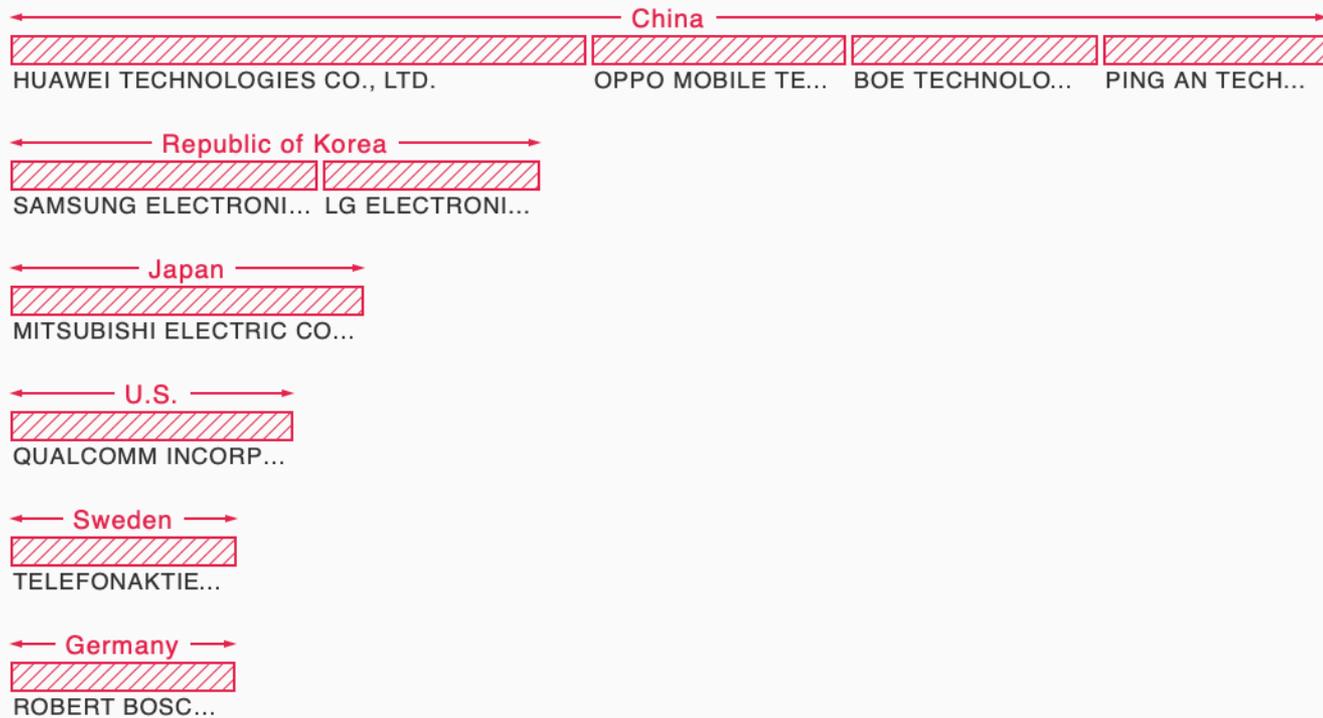


Around 265,800 PCT international applications were filed in 2019, up 5.2% on 2018, kept its upward trend since 2010. For the first time, applicants from China filed the most PCT applications. The U.S., Japan, Germany and the Republic of Korea completed the list of the top five origins.

PCT top 10 applicants

WHICH FIRMS LEAD PCT INTERNATIONAL PATENT FILINGS?

Sort by: **FIRM** **COUNTRY**

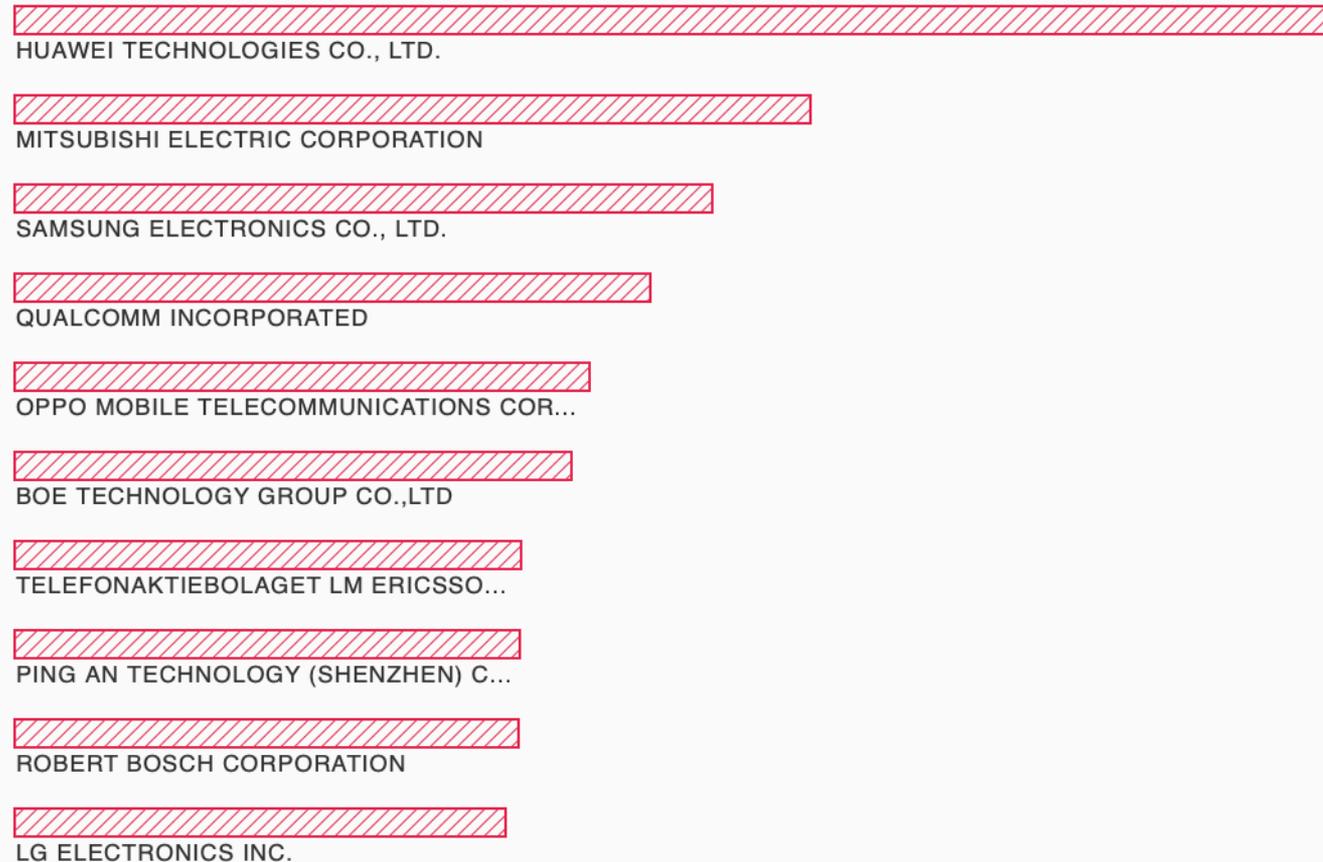


China's Huawei Technology remained the top filer of the PCT international applications in 2019. It was followed by Mitsubishi Electric of Japan, Samsung Electronics from the Republic of Korea, Qualcomm of the U.S., and Oppo Mobile Telecommunications of China. Among the top ten users, seven are located in the North East Asia.

PCT top 10 applicants

WHICH FIRMS LEAD PCT INTERNATIONAL PATENT FILINGS?

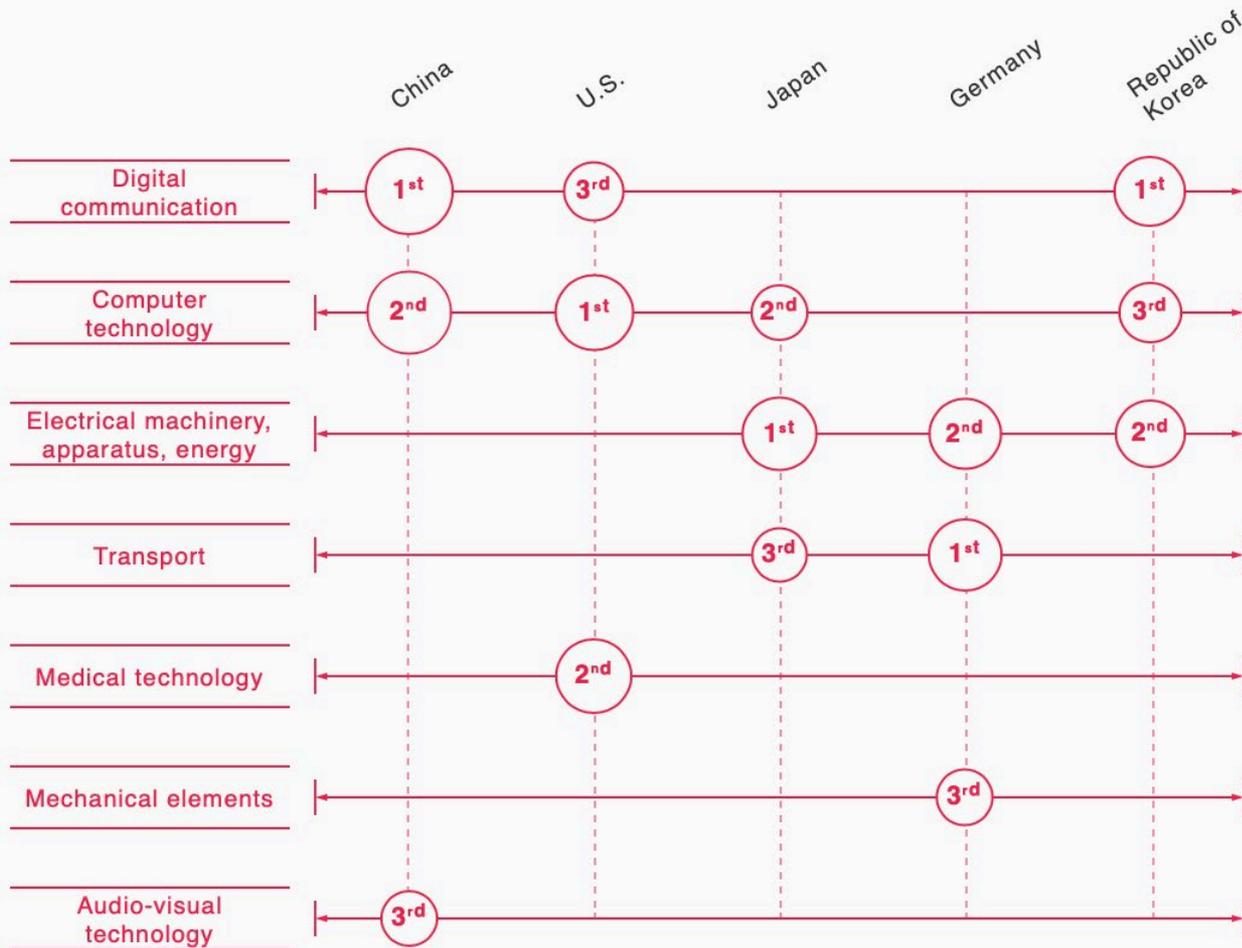
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PCT top tech fields

WHICH COUNTRIES SPECIALIZE IN WHICH TECHNOLOGIES?



Applicants from China and the Republic of Korea filed intensively for patents related to digital communication, while those from the U.S. filed most in the field of computer technology. For Japan, the top technology field was electrical machinery, and for Germany it was transport.

II. IP: A national priority policy

1. China's innovation policy
2. China has recognized the IP national policy as a national priority

1. China's innovation policy

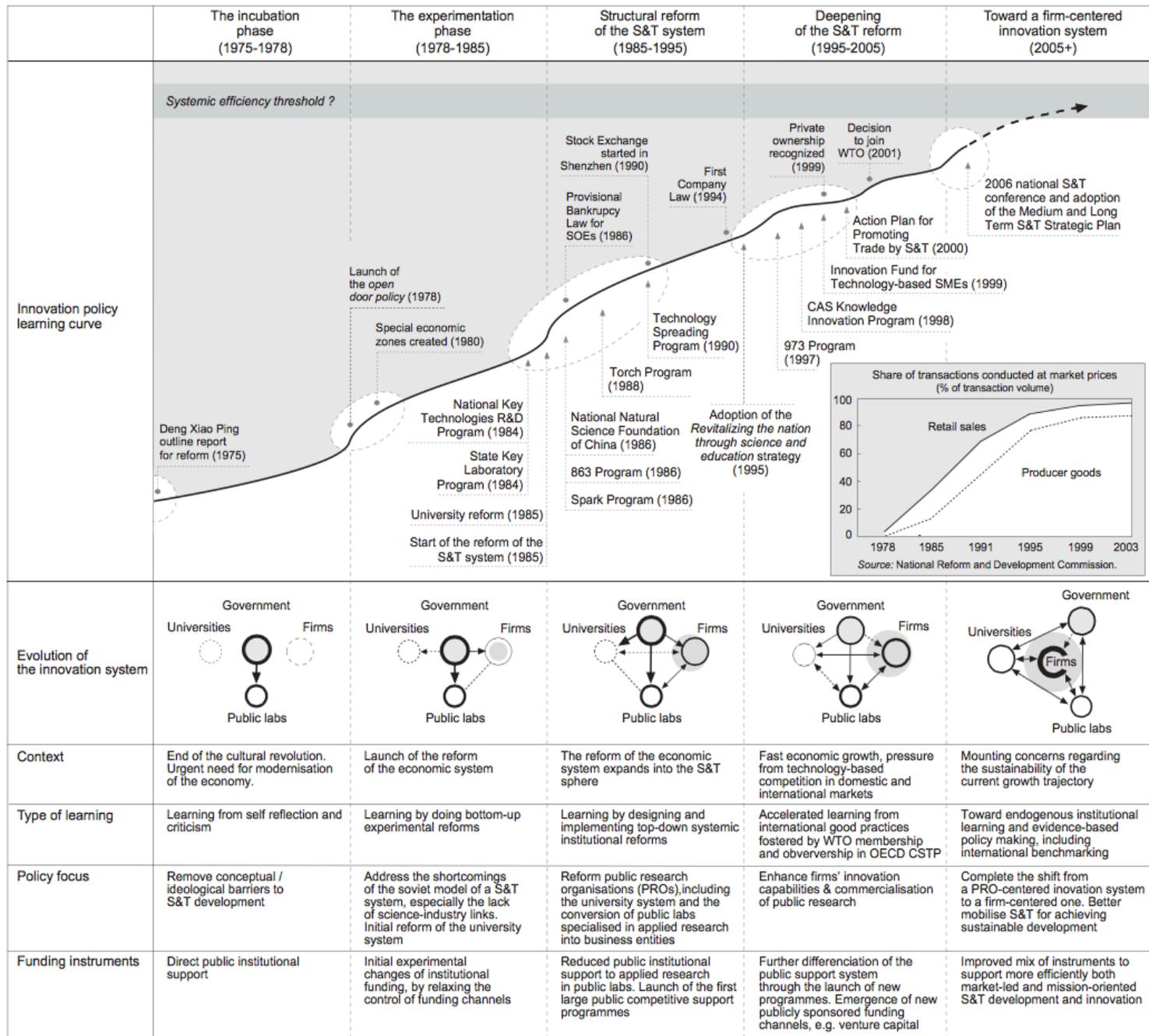
To understand the evolution of the chinese policy:

On the next slide, see a useful document published by OECD on China's innovation policy since 1978 (Open door policy of Deng Xiaoping) until 2007

OECD Reviews of Innovation Policy – CHINA - Synthesis Report – 2007

China's re-emergence as a major power in the world economy is one of the most significant developments in modern history. Economic reforms and the "open door" policy have prepared the ground for the Chinese economy's performance

Figure 3.1 China's innovation policy: institutional reform and learning curve



Source: OECD.

2. China has recognized the IP national policy as a national priority

For 20 years, the Chinese government has adopted an impressive National Intellectual Property Policy, elevated to the rank of National Priority.

China has adopted a four-year 2008-2012 plan in 10 measures aimed at applying by 2020 the best international standards for obtaining, protecting, exploiting and exercising IPR on the Chinese territory.

Since the entry of China into the WTO (11/12/2001), China has promulgated a more and more modern IP regulation, that is improving (international standards), and ratified most of international IP treaties.

Chinese Prime Minister LI Kejiang, recently declared:

“Further enhancing the protection of intellectual property rights is crucial to improving our property rights protection system. It is required by scientific and technological innovation and essential for China's greater opening-up”

A policy of education



Education on Intellectual Property:
A Reader

知识产权教育读本

广东省知识产权局 主编

中级版

第3版



北京知识产权出版社

The national strategy on IP

Strengthening policies in support of innovation is one of the priorities stated by the Chinese authorities in the medium and long-term national program for the development of science and technology over the period 2006-2020

Published in 2008 the "national strategy on intellectual property" sets the main orientations in the field for 2013 and 2020

Its mission is to bring out national champions with IP rights equivalent to those of their foreign competitors and to promote the development of local innovation (indigenous innovation)

A recent priority in green innovations:

A very strong growth in innovations and patents in green technologies during the last 10 years

Domains:

- smart grids
- batteries
- Biofuels
- Water quality
- High-speed train

China, first country for patent application in solar energy among energy-related technologies

Comparison in terms of number of patent applications between China, USA, Japan, Germany and France between 2005 and 2013 (French IP Office)

CHINE : ENVOLÉE DES DÉPÔTS DE BREVETS, NOTAMMENT DANS LES TECHNOLOGIES VERTES

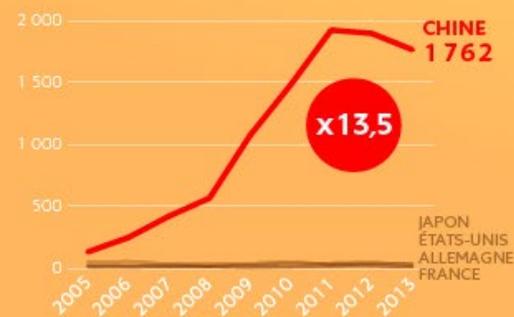
COMPARAISON DU NOMBRE DE BREVETS DÉPOSÉS EN CHINE ET DANS D'AUTRES PAYS ENTRE 2005 ET 2013



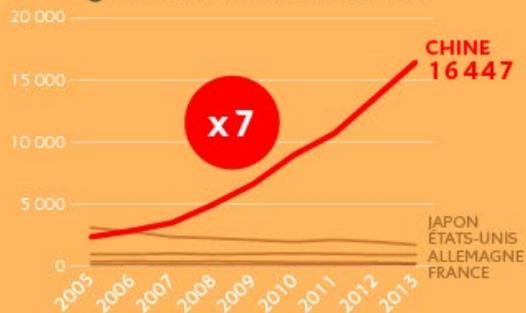
RÉSEAUX ÉLECTRIQUES INTELLIGENTS



TGV DU FUTUR



QUALITÉ DE L'EAU ET GESTION DE LA RARETÉ



BIOCARBURANTS



BATTERIES



China National Intellectual Property Administration – May 28, 2020

“100 Projects in 2020 to Deeply implement the National Intellectual Property Strategy to Accelerate the Construction of the Intellectual Property Powerful Country Promotion Plan (the “100 Project List”)

(2020年加快建设知识产权强国推进计划提出 100项具体措施)

An ambitious program:

- Reducing patent examination time for “high value” patents to 16 months
- Reducing trademark examinations to 4 months
- Developing IP quality vs quantity
- Developing plant variety protection
- Improving IP-related services
- China is also doing a lot more on IP than what the Phase 1 Agreement requires
- China reiterates its commitment to plurilateral IP policy

III. Strengthening of the effectiveness of IPR

- 1) A re-organization of the administration of IP
- 2) A development of a IP specialized justice
- 3) An improvement of the IPR rules

1. A New Organization of IP Administration

Until 2018: A split organization

Since 2018: A concentrated organization

Creation of the CNIPA

CNIPA under the supervision

of State Administration of Market Supervision and Administration

CNIPA replaces SIPO (Patents) and Trademark office

CNIPA competent for patent, trademark and Geographical indications



<http://english.cnipa.gov.cn>

2. An Implementation of a specialized justice

Establishment of a specialized court system for the judicial protection of IP,
a continued improvement of the IP litigation system:

Creation of 3 levels of specialized jurisdictions

Creation of 3 research centers to unify the jurisprudence

Publications of cases by the Supreme Court

A growing activity

3 levels of specialized jurisdictions:

- 20 IP Tribunals in the main cities (since 2017):

Nanjing, Suzhou, Wuhan, Chengdu, Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao, Shenzhen, Tianjin, Zhengzhou, Changsha, Xi'an, Nanchang, Lanzhou, Changchun, Wulumuqi, Haikou

- 3 IP Courts (regional courts of Appeal created - 2015):

Beijing, Shanghai, Guangzhou

- IP Tribunal of the Supreme Court (2019)

Creation of 3 research centers to unify the jurisprudence

IP Case Guidance Center (Beijing);

International exchange Center (Shanghai);

IP Judicial Protection and market value (Guangzhou)

Publications of cases by the Supreme Court

The Supreme Court released IP Law Cases

See: <http://ipc.court.gov.cn/en-us/index.html>

A rising number of IP cases

Litigation activity in IP domain is constantly increasing:

In 2017, nearly 250,000 new IP cases received by Chinese courts:

It mainly concerns copyright (50% of litigation),
trademarks (15%)
patents (7%)

In 2018, 301,278 new IP cases received by Chinese courts in the first instance, of which 287,795 were concluded.

An increase of more than 40 percent compared to 2017

A more efficient role

As far as international IP cases are concerned, China has one of the shortest adjudication periods in the world:

The average adjudication time of foreign-related IP cases handled by the Beijing Intellectual Property Court is now four months

Several recent cases demonstrate the Supreme Court's commitment to protecting the legitimate rights of foreign parties

3) An permanent improvement of the IPR

The China's IP regime is more and more sophisticated

All laws have been modified several times during the last 40 years

The Supreme Court has published several interpretations

The new IP Court system helps the effectiveness of the IP regime

Patents

The Patent Law has been adopted in 1984, revised in 2000 and 2008.

Before october 2009, the condition of novelty was relative (chinese territory)
Since october 2009, the condition of novelty is absolute (world)

The draft of the new patent law (4th revision) introduce:

Increased punitive damages,
Increased fines for infringement,
liability of platforms for online services,
increased recognition of service inventions
or new concepts such as the introduction of an open patent license system

Industrial design (Patent Law)

Until now:

- impossible to protect an industrial design if non respect of the condition of absolute novelty
- A partial imitation is not a counterfeit

Evolution (the coming new law):

- A Partial imitation is a counterfeit
- Duration: from 10 to 15 years
- Admission at The Hague Convention
- The offer to sell products reproducing a design or model filed without authorization constitutes an infringement

Neoplan (Germany) vs Zhongda (China)

Case study



1. Neoplan registered the design in Germany,
then in China on 24th august 2005
2. Neoplan has discovered a copy by Zhongda
3. Neoplan sued Zhongda and won (Beijing Court in january 2009 – 2M €)
4. Zhongda has discovered than Neoplan has published photos of the new bus
in 2 professional magazines before the registration
5. The Beijing Court has canceled the design in 2012

Why ?

In China, a condition of absolute novelty

In EU, a delay of 12 months before the application

Another
Case
Study





Until now,

it was impossible to ban Chinese copies of foreign cars if the copy is partial

New jurisprudence in 2019:

After 5 years of dispute, the Beijing Court has ruled in favor of Land Rover:

- That the vehicle “Land Wind X7” was direct plagiarism
- That he had copied five distinctive design features from the Range Rover Evoque,
- That the similarity has led to the confusion of the Chinese consumer.

Trademark

The trademark law has been adopted in 1982, revised in 1993, 2001, 2014, 2019.

Introduction in 2014:

- The principle of good faith (art. 7): *The principle of good faith shall be upheld in the application for trademark registration and in the use of trademarks. The user of a trademark shall be responsible for the quality of the goods on which the trademark is used.*
- A 3D form and a sound become eligible for registration as a trademark (art. 8)

Introduction in 2019:

- TMO can reject bad faith filings where there was no intent to use (art.4, 33, 44)
- Bad faith filers and trademark agents may be subject to warnings and fines (art. 68)

Trademark

Progress of the jurisprudence

3 landmark decisions:

- QQ
- Dior
- Jordan

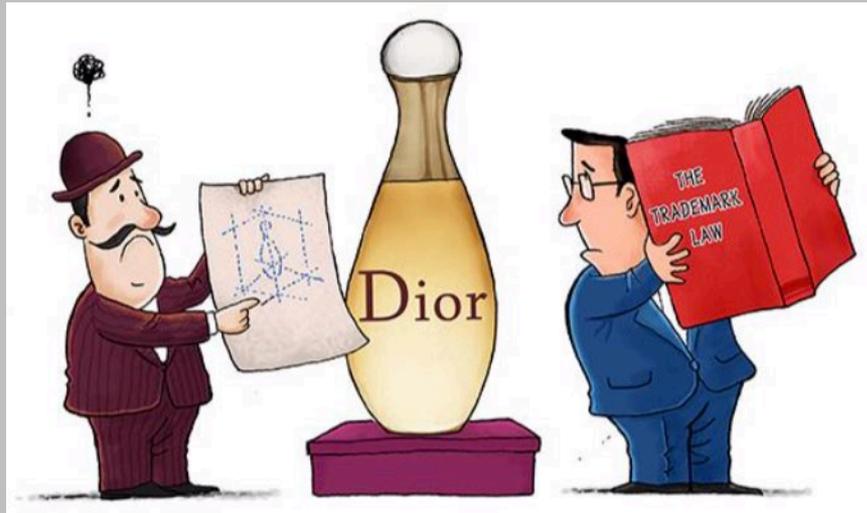
First sound trademark case in China:

registrable but only on the product actually using the mark

On Sep. 27, 2018, Beijing High People's Court made the final decision siding with Tencent and holding that QQ notification sound trademark is distinctive and registerable.

QQ notification sound of “Di Di Di Di Di Di”

J'ADORE de DIOR



A landmark decision: The Supreme Court has , for the first time, on 26 april 2018, recognized, after 4 years of procedure, the validity of a 3D form of a trademark



XIAODAN



JORDAN

Jordan Case:

Qiaodan Sports, a chinese sportwear company, has obtained officially the trademark 乔丹 Qiaodan, the Mandarin transliteration of Michael Jordan, who as the first filer, and has developed his business with 6.000 stores in China.

After four-year lawsuit, against Qiaodan Sports Company, on december 11, 2016, the Chinese Supreme Court ruled largely in favor of Michael Jordan.

The decision held that Mr. Jordan owns the legal rights to the Chinese characters of the equivalent of his name, 乔丹 Qiaodan, overturning previous lower-court.

But the Supreme Court has authorized the chinese company to continue to use "Qiaodan" in the Roman alphabet and the logo.

This is a very important decision:

Until the Jordan ruling, the situation was unclear.

The decision of the Supreme Court may reflect a renewed determination to tackle the country's rampant trademark infringement problem.

The ruling could have broad implications for other foreign companies and foreign celebrities.

Since may 1, 2014, the trademark law has introduced a long awaited principle: good faith.

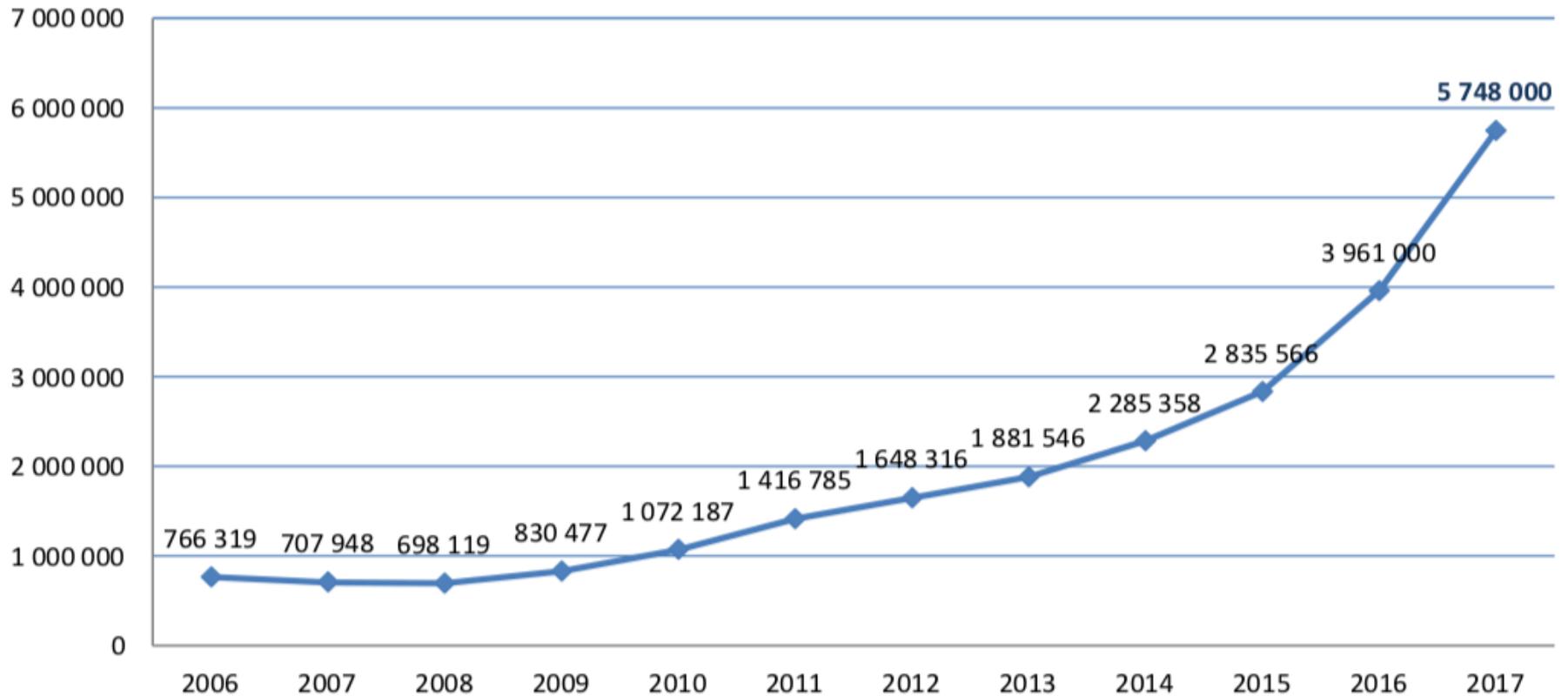
It will probably protect well-known foreign companies in the future.

Trademark

Still current problems:

- Too many trademark applications
- Increasing sophistication of counterfactors
- fraudulent trademark filings
- Shortcomings of chinese law

Trademark domestic and foreign applications in China (2006-2017)



In 2018 : 7,365,522 trademark applications

In 2019 : 7,837,441 trademark applications

Main Chinese Laws:

Patent Law (1984; amended in 1992, 2000, 2008;
Fourth Amendment being adopted)

Trademark Law (1982, amended in 1993, 2001, 2014 and 2019)

Copyright Law (1990, amended in 2001 and 2010)

Anti-Unfair Competition Law (1993, amended in 2017 and 2019)

E-commerce Law (Adopted on 31 August 2018)

Civil Code (in force on 1 January 2021)

Resources:

www.wipo.int

<https://wipolex.wipo.int/en/main/legislation>

<https://ipkey.eu/en/china>

www.iprhelphdesk.eu/china-helphdesk

www.chinaipr.com

www.oecd.org

<https://supremepoplescourtmonitor.com>

<http://english.cnipa.gov.cn/>

https://www.ccpit-patent.com.cn/laws_regulations

<https://www.epo.org/service-support/faq/searching-patents/asian/faq.html>

<http://ipc.court.gov.cn/en-us/index.html>