

# The IP landscape in China

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# Today's Speaker



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Tom Carver is a partner at J A Kemp who specialises in intellectual property and has substantial experience in multiple-jurisdiction patent and design right litigation in the UK and in China. Tom is now based in London, having previously spent three years living in China, and advises clients on the enforcement of intellectual property rights in China as well as other China-related issues, including commercial law. Tom also advises Chinese companies on UK law. He is a regular speaker on the topic of IPR in China and has published several articles on this subject.

# Agenda

1. Lessons learnt from the latest pharmaceutical patent infringement cases in China
2. What evidence can you bring before the Chinese courts?
3. Main procedural aspects you must be aware of when initiating proceedings in China

# Main Procedural Aspects

- Patent linkage
- Timeline of an action
- In-suit applications
  - Evidence Preservation Orders
  - Asset Preservation Orders
  - Customs seizures

# Procedural Aspects: Patent Linkage

- Drug Registration Regulations
  - Articles 18 and 19: the applicant shall provide information on patents and a statement of non-infringement and the SFDA shall issue drug approval after the expiry date of the patent.
- But...
  - Incomplete patent/drug database.
  - SFDA does not have the resources to police effectively.

# Procedural Aspects: Timeline

- Authorisation documents
  - Patent, company certificate, certificate of authorisation, passport, power of attorney.
- Collect evidence
  - Witnessed, from the factory, with a chop.

# Procedural Aspects: Timeline

- File at Case Acceptance Division
  - Jurisdiction challenge plus appeal
- Evidence Exchange
- Trial
- Settlement discussions
- Appeal

# Evidence Preservation Order

- Court (or IPO) will visit premises and seal evidence
- Not guaranteed success
  - Not permitted access
  - Not shown crucial evidence



# Asset Preservation Order

- Preserve assets to pay damages
- Not guaranteed success
  - No assets
  - Other creditors

# Customs Seizures

- Inform officers
- Seize container
- Bond
- Counter-bond
- Civil Litigation

# What Evidence Can You Use?

- Sale/manufacture
  - Notary public (or EPO) is essential
  - Judge has little/no discretion
  - Recent Guidance on burden of proof
- Expert evidence
  - Approved institutions only but no weight

# What Evidence Can You Use?

- Foreign evidence?
- Foreign import documents?
- FDA approval/licence?
- For damages?
  - Reverse burden of proof?

# Recent Lessons Learnt

- Interim injunctions are possible
  - Novartis re Glivec
  - Eli Lilly re trade secrets

# Interim Injunctions?

- Must prove
  - Infringement
  - Irreparable harm
- New guidelines circulated in draft
  - ‘Stable’ patent
  - Not irreparable if damages are ‘relatively’ easy to calculate

# Conclusions

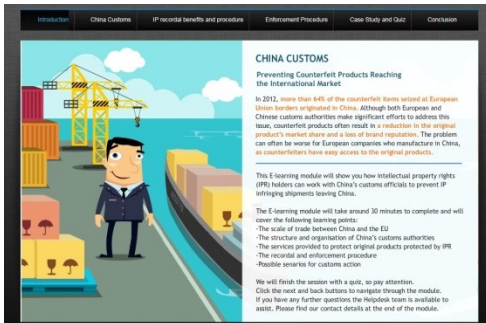
- Remains a challenging jurisdiction
- Specialist IP courts started 2014
- Fundamentals have not changed
  - No rule of law
  - Courts have very little power

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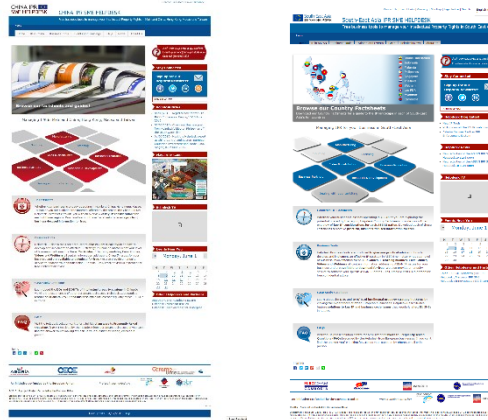
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## E-learning & Business Tools



## Websites & Blog



## Training Workshops & Live Webinars



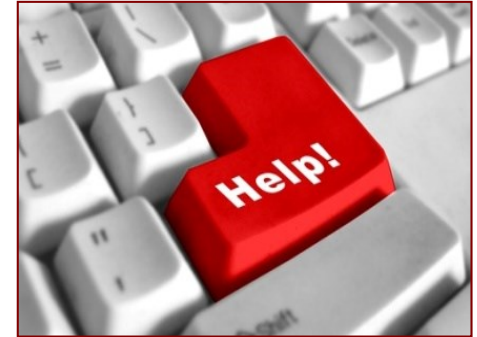
## IP Guides & Newsletters





# Enquiry Helpline

- IPR **one-to-one** consultations: E-mail, telephone, face-to-face
- **First-line advice** on China countries IPR matters
- **Confidential**
- Delivered by **China IPR specialists**
- Available for **EU SMEs and SME intermediaries**



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# Information & Materials

- Library of publications:
  - **IP specific guides**, incl. patents & trade marks
  - **Industry specific guides**, incl. textiles, machinery
  - **Business guides**, incl. technology transfer
  - **Hong Kong and Macao Factsheets**
- Quarterly Helpdesk newsletters
- Article placement
- Topical blog posts



# Training workshops & webinars

## Workshops across **Europe and China**

- Addressing **general IPR** and **industry specific IPR** matters
- Trainings delivered in **several languages**
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- **Webinars:** Save time by joining these interactive training sessions from your own office or watch recordings online



# Online portal

- Practical IPR guides
- E-learning modules
- Case study catalogue
- FAQs
- Helpdesk newsletters
- Event information
- Latest blog posts
- Helpdesk videos

[www.china-iprhelphdesk.eu](http://www.china-iprhelphdesk.eu)

The screenshot shows the CHINA IPR SME HELPDESK website. The header includes the logo and the text 'Free business tools to manage your Intellectual Property Rights in China'. The main navigation menu on the left lists various services and resources. The central content area features a 'Ask the Helpdesk...' section, a diagram titled 'Managing IPR for your Business in China' with categories like 'Starting', 'Manufacturing', 'Using', 'Sales & distribution', 'Business Partners', 'Research & Development', and 'Dealing with counterfeiting'. Below this is a 'Helpdesk News' section with a list of recent news items. The footer contains logos for Advantage Austria, DCCC, and Sodercan, along with copyright information for 2013.

The **China IPR SME Helpdesk** provides **free, confidential, business-focused advice** to European Small and Medium Enterprises (SMEs) relating to **IPR** in China

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groups

# Feedback Questions Discussion