



Analyzing Legal Methods to Fight Chinese Patent Infringement in the US

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INTRODUCTION

With the increase of new inventions and ideas around the globe, patents and the protection of ideas are more essential than ever. For my research, I asked the question “what is the best way lawyers can prevent Chinese patent infringement in the US?” My focus on China’s patent infringement came from the long-lasting notion in the US that China is the top country in which patents are infringed upon. Through this question I planned to discover the law behind this infringement and the best way to prevent it through law.

RESEARCH METHODOLOGIES

For my project, I used applied research with hybrid, both quantitative and qualitative, data. The general population I studied was IP infringement cases with a sample population containing lawsuit and US Patent Trials and Appeals Board cases. The US Patent Trials and Appeals Board is a higher executive branch body that deals with trials involving the validity of patents, patent infringement, and appeals to prior cases. The cases brought to the PTAB are ones that needed to be dealt with at a higher courts than the judicial branch. I collected my data randomly by selecting five patent infringement lawsuit cases and five patent infringement US PTAB (Patent Trial and Appeals Board) cases. Within the lawsuit cases, I categorized my data by the case description, 1.) the money lost from competing sales (damages), 2.) other relief sought, and 3.) the overall effect. Under the PTAB cases, I categorized my data by 1.) the action on patent applications, 2.) challenges to the PTAB decisions, and the 3.) overall effect. After, I planned to analyze my data through a self-created point and color system through which I can assign points to each case based on its effectiveness. I created the point system based on the categories I analyzed them through. Each category is worth one point and the overall effect is worth two. The colors reflect these points as dark blue reveals a score of three points, the blue a score of two, the light blue a score of one, and the lightest blue a score of zero.

DATA AND FINDINGS

As revealed before, I split my data into three categories for each case. Under the lawsuit cases, I found that although payment for damages, injunctions, and royalties are typically received, the overall effect is small. This means that either the infringer continued selling the product, as seen through cases after the one being analyzed, or the precedent set did not actually benefit the petitioner.

On the other hand, the PTAB cases seemed to be even less effective. Although most of them set valuable precedents in the US, these holdings meant nothing to Chinese courts and most were found in the infringers favor at these courts.

DISCUSSION, ANALYSIS, AND EVALUATION

Through my research, I found that it may seem like lawsuits are more effective than going through the PTAB but under more evaluation, the results are more inconclusive than the data presents on the surface. Lawsuits seem to be more efficient because the cases I analyzed typically ended in a payment of some sort (royalties, purchase of patent, damages) but many were also taken to a Chinese court and quickly ruled in a different way. PTAB cases were very similar because they may have set precedents, but the cases were also typically brought to a Chinese court and in turn lost all effectiveness.

Judicial Branch				
Lawsuit	Case Name	Payment Received for Damages	Other Relief Sought	Overall Effect
	Microsoft Corp. v. i4i Limited Partnership	\$200 million to i4i	Partial Injunction	- US company lost - Microsoft stopped using patented product in many places in the US
	Halo Electronics v. Pulse Electronics Inc.	\$1.5 million to Halo	Enhanced damages - denied Permanent injunction	- Revoked Fed. Circuit's test for awarding enhanced patent damages - Created a more flexible standard for issuing enhanced damages in patent infringement cases
	Stryker Corp. v. Zimmer Inc.	\$70 million	\$11.2 million of interest	- Next morning, Zimmer shares rose 37 cents to \$82.98 and Stryker 19 cents to \$70.98
	Kimble v. Marvel Entertainment	None	Royalties (3%) Purchase of patent (\$500,000)	- Upheld Brulotte v. Thys Co. (says patentees cannot recieve royalties after patent expires) - Kimble lost product all together
	KSR International Co. v. Teleflex Inc.	None	None	- Rejected a strict application of TSM test - Rose the bar for patentability - Courts now find it easier to invalidate patents based on things such as personal background - Prompted challenged to patents that have already issued in district courts or reexamination request

Executive Branch				
PTAB Activity and Decision-making	Case Name	Action on Patent Applications	Challenges to PTAB Decisions	Overall Effect
	Huawei Techs Co. v. Samsung Electronics Co.	Court found there was evidence that Huawei was infringing on patent owned by Samsung	Evidence of infringement by Huawei on all 3 of Samsung's patent	- Although Samsung won in US PTAB case, a court in China (Shenzhen Intermediate People's Court) ruled Jan. 18 in favor of Huawei - This banned Samsung from manufacturing and selling products that used their own patent - Little to no effect
	Apptronics Corp. v. Delta Electronics	Court found this case was not in the jurisdiction for this case to be transferred and therefore they cannot reject the claims made by apptronics	Northern District of California doesn't have jurisdiction over Delta and therefore venue is not proper	- Delta continued suing Apptronics in Chinese courts - A little to not effective
	Shenzhen Busian Network Technology Co. LTD. v. Sun Pleasure Co. Limited	Court found that Network Tech did not have enough evidence to reject the claims made by Sun Pleasure Co. - Network Tech infringed on Sun Pleasure's patent	Not enough evidence to reject the claims	- Continued to prevent SBN Tech from selling infringed product which upheld the prior ruling - Unknown if BNT actually obeyed but no other disputes are reported in the US - effective
	Semiconductor Energy v. TLC China Star Optoelectronics Technology LTD.	Court found petitioner (Opoelectronics) would not prevail in any of its challenges to claims made by Semiconductor Energy	Petition is denied and no trial is instituted	- Many other cases of infringement on Semiconductor's product found not just with Optoelectronics but also other Asian companies - Not effective
	BJ Energy Solutions LLC. v. Yantair Jerej Petroleum Equipment & Technologies Co. LTD.	Court found that institution of trial in post-grant review of the claims of Petroleum Equipment and Tech is denied	Petitioner (BJ Energy Solutions has not demonstrated that the challenged claims (made by Petroleum Equipment and Tech) are unpatentable under the asserted grounds	- Many more cases of patent infringement enacted by BJ Energy found (continues to infringe on other company's patents including Petroleum Equipment and Tech)

Dark Blue	Very effective	3
Blue	effective	2
Light blue	less effective	1
Lightest blue	not effective	0

CONCLUSIONS, IMPLICATIONS, AND NEXT STEPS

Based on evaluation of the overall effect of each of these ten cases, I can conclude that neither lawsuits nor the PTAB is more effective when preventing Chinese patent infringement in the US. Although the lawsuit cases presented a higher score of eight, compared to the PTAB cases of seven, the overall effect of these cases were too similar to definitively conclude that lawsuits are more effective than the PTAB.

Also, the results may be more inconclusive than predicted because of the knowledge of law required for a research question like this one. For example, when researching PTAB cases, the details and overall effect was very difficult to find as much of it was not publicly available. To add, If I were able to analyze a full ten or twenty cases for each category, the results may have come out differently.

Overall, although inconclusive, I clearly found that Chinese patent infringement is extremely difficult to prevent as there are drastically different laws. My next steps to this project would be to expand the amount of cases I research through further knowledge of law. I also would more thoroughly research other forms of fighting Chinese patent infringement that I might not have known about this year.

ACKNOWLEDGEMENTS / REFERENCES

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