

Japanese measures against IP infringement in China, South Korea and Taiwan

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Japan has a long history of amicable trade with its immediate neighbours, especially China. However in recent years this trading has soured, with Japanese companies showing increasing concern about IP infringement not only by China, but also by South Korea and Taiwan. A recent report in the International Herald Leader through Xinhua news agency warned that corporate Japan is organizing a patents-armed campaign against Chinese electronic products.

Introduction

In the 16th Century, Mitsui Zaibatsu (a conglomerate company with cross share holdings) had a vibrant trade with China, selling coal from Japan. Mitsui had been granted an exclusive contract from the nobles in charge of the government in return for financial injections (Mitsui were the first official bankers of Japan). During the 19th Century this prosperous trading relationship continued, with Japan selling English spindles to China's huge textile industry.

More recently, trade relationships between Japan and its neighbours have been marked by allegations and litigation. Japanese companies have initiated wide-ranging legal and other measures against East Asian businesses. Many lawsuits deal with South Korean patent infringement including:

- Toshiba's allegations against Hyundai on flash storage
- Matsushita's complaint's against LG for plasma displays -
LG electronics products have now been deprived access to the Japanese market
- Fujitsu's criticism of Samsung.

Another recent example is Sharp's lawsuit against a Taiwanese company for LCD patent infringement.

Intellectual property rights in electronics products

Intellectual property rights (IPR), especially in the electronics product arena, are regarded as being central to sustaining Japanese economic recovery, through the development of new generation products. To support this, Japanese companies have banded together to unleash concerted patent protection action against their East Asian competitors. A number of Japanese

electronic and mechanical producers have demanded a cease of infringements by, and economic compensation from, Chinese, South Korean and Taiwanese enterprises.

Twenty-one Japanese manufacturers in China are working in tandem to investigate and lodge complaints against Chinese companies. Many Japanese companies — including Toshiba, Canon, NEC, Hitachi, Matsushita, Sony, Sharp and Olympus — have also developed in-house IPR teams to trace and deal with IP infringements.

Co-operation between Japan and China

To tackle the infringement problems more directly and aggressively, according to a recent report in JiJi Press, Japan and China have agreed to cooperate more fully in prosecuting those who are making illegal copies of Japanese goods in China.

Earlier this year a series of meetings were held between Chinese intellectual property rights officials and a Japanese delegation led by the former Chairman of Honda Motor Company, Mr. Yoshihide Munekuni. Following these meetings, Japan's International Intellectual Property Protection Forum proposed in June 2005 that Japan will assist in instituting a number of anti-counterfeiting measures. These include:

- sending Japanese experts to China to hold seminars showing Chinese enforcement agents how to distinguish counterfeit products from the genuine articles
- providing past examples of illegally copied goods.

Mr. Munekuni told a press conference that he believed China was making progress in inhibiting the production of counterfeit goods because government ministries are working closer together to improve enforcement.

Within Japan, universities are beginning to hold Chinese company law and basic law courses, so expertise can be developed to stem the increasing tide of infringement cases.

Future battlegrounds

The next battleground to see Japanese businesses take action against Chinese competitors will involve Japanese digital camera makers. This is because unlicensed technologies of Japanese origin are embedded in low cost digital cameras that are made in China.

Litigation has also been brewing in the automotive sector. Nissan and Honda have established sections in their Chinese operations to deal with patent infringement cases, and Toyota is thinking about following the other car manufacturers' example.

Bringing infringers to court

The task of the experts in Japanese-funded enterprises in China will be to collect evidence of patent infringements and counterfeited products. This evidence will be used to encourage the Chinese departments of Public Security, Industry and Commerce to enforce existing IP law against Chinese enterprises that infringe. Contrary to the traditional behaviour of the Japanese which avoids confrontation and litigation, these experts will use the evidence to bring Chinese businesses to court.

After joining the World Trade Organization, China has made efforts to protect IP rights. The recent examples of court rulings outlined below are giving Japanese companies hope that enforcement is becoming tighter:

- Between the year 2000 and November 2004, Chinese courts on a nationwide basis made rulings in 2171 cases of illegal production; 1948 Chinese individuals were charged with infringement offences during the first trial
- Between 2002 to October 2004, another 1271 cases of illegal production and the sale of counterfeited and poor quality products were brought to trial
- The Chinese prosecutor's office also arrested 2462 people within 1539 infringement cases, and indicted 2491 people in 1500 cases, between 2000 to November 2004
- The Supreme People's Court has from the year 2000 published 25 legal explanation documents about IP right court cases

The two sample cases below — taken from December 2004 — show the efficacy of the Chinese courts in upholding Japanese evidence of counterfeiting or trademark infringement:

- A Beijing Court ruled in favour of Honda Motor Company in a trademark lawsuit against a Chinese company using the name "Hongda", decreeing that the latter must cease from using their name and pay damages to Honda. The Beijing No. 2 Intermediate People's Court ordered Chongqing Lifan Industry group Co. a private motorcycle maker to pay 1.47 million yuan (about £92000.00) in damages to Honda.

- Ricoh, the Japanese electronic company, reached an out of court settlement in December 2004 with Taiwanese company CMC Magnetics, after appealing to a California federal court concerning CMC's infringement of an optic data recorder patent

Conclusion

While there is a great deal of work to be done in terms of enforcement of IP law in China, South Korea and Taiwan, there is both a growing awareness of the problems and a willingness to proactively prosecute offenders. Japan is taking an active role in the process of prosecuting offenders by providing evidence, and training those who have to enforce the law in neighbouring East Asian countries.

Additional information

Managing IP in Japan: <http://scientific.thomson.com/knowtrend/ipmatters/bti/8249985/>

Managing IP in China: <http://scientific.thomson.com/news/newsletter/2005-04/8272848/>

Managing IP in South Korea: <http://scientific.thomson.com/news/newsletter/2004-11/8254445/>

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The Centre for Japanese and East Asian Studies, of which Prof. Taplin is Director, won Exporter of the Year in Partnership in Trading/Pathfinder for the UK in the year 2000. She received her doctorate from the London School of Economics and is the author/editor of 11 books. The most recent are, *Exploiting Patent Rights and a New Climate for Innovation in Japan* (2003 Intellectual Property Institute) and *Valuing Intellectual Property in Japan, Britain and the United States* (2004 RoutledgeCurzon). Two other books being published this year are *Risk Management and Innovation in Japan, Britain, Europe and United States* and *Japanese Telecommunication Markets and Policy in Transition*. She is the author of many articles for both journals and magazines and is preparing another book to be published by Routledge entitled *Innovation and Business Partnering in Japan, Europe and the United States*.

Prof. Taplin has been Editor of the *Journal of Interdisciplinary Economics* for 10 years. She has been on television and radio around the world speaking on topics dealing with economics, IP law and cross-cultural matters in relation to East Asia. She is a Research Fellow at Birkbeck College, University of London, UK and the University of Leicester, UK, and a Visiting Professor at the School for International Business at Warsaw University, Poland.