



# China's Emerging Intellectual Property Edge: *Challenges and Opportunities*

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## Organization

- Underlying Principles
- “Study Session” on Xi Jinping Thought
- “Study Session” on Donald J. Trump Thought
- Next Steps Under President Biden

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# First - Underlying Principles

- Never before had IP been the prime instigator in a major global trade war.
- Or was the war about:
  - Trade deficits
  - National security/emerging powers
  - Competition
- Why now? Long overdue? Just in time?
- If IP was the cause...the Chinese IP regime has improved remarkably in the last 10 years
  - Three Myths (Dan Prud'homme/HBR)
    - State-sponsored IP Theft is Ubiquitous
    - China's IP Regime is Categorically Weaker and Less Business Friendly
    - China is not a liberal democracy; its Institutions Will Never Respect IP

*How has the Chinese IP System Gotten Better? Is it "categorically weaker" and less "business friendly" than the US?*

## PATENT WIN RATES

**Table 5: Case Outcomes by Litigant Type**

		Defendant						
		Foreign		Domestic Private		Domestic State-Owned		
		Infringement Found	No Infringement	Infringement Found	No Infringement	Infringement Found	No Infringement	
Plaintiff	Foreign	Infringement Found	80% (4)		70% (31)		-	
		No Infringement		20% (1)		31% (13)		-
	Domestic Private	Infringement Found	67% (16)		57% (224)		27% (3)	
		No Infringement		33% (8)		43% (168)		73% (11)
	Domestic State-Owned	Infringement Found			100% (1)		-	
		No Infringement					-	-

**Table 23: Case Results, by Residency of Plaintiff**

	Decisions	Infringed	Injunction	Avg. Damages
Total	1,663 (100%)	1,333 (80.16%)	1,203 (90.25%)	¥75,942.39 (\$12,368.47) <sup>119</sup>
Foreign P.	115 (6.92%)	97 (84.35%)	90 (92.78%)	¥201,620.45 (\$32,837.21)
Domestic P.	1,548 (93.08%)	1,236 (79.84%)	1,113 (90.05%)	¥66,217.93 (\$10,784.68) <sup>120</sup>

Sources: Brian Love (2016), Bian Renjun (2018).



Table 3: Comparison of win rates for selected foreign software copyright plaintiffs (1<sup>st</sup> instance, 2010-2019, N= 271)

Company Name	Cases	Wins	Win rate
Rhino Software Company	113	83	73.5%
Alt-N Technologies	67	58	86.6%
Microsoft Corporation	63	63	100.0%

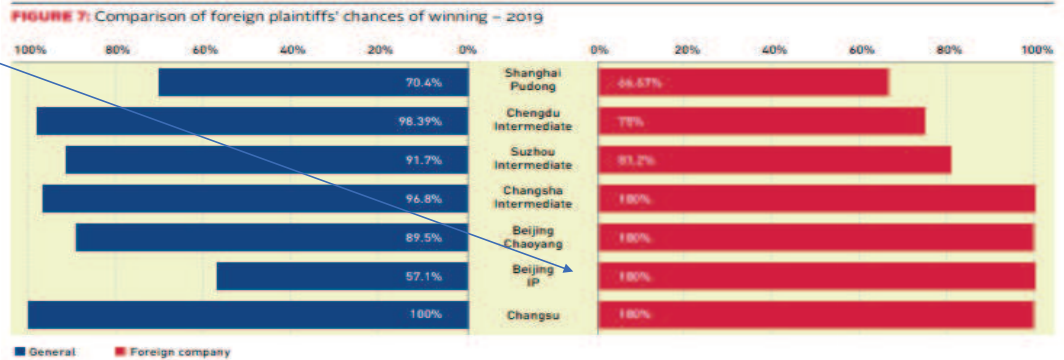
  

Company Name	Cases	Wins	Win rate
Siemens Product Lifecycle Management Software Inc	12	12	100.0%
Autodesk, Inc	10	10	100.0%
Dassault Systèmes	6	6	100.0%

### Other Win Rates (non-patent)

"In 2015 (the most recent year that complete data is available) Plaintiffs in Civil IP infringement cases [at the Beijing IP court] won 72.34% of their cases, while the success rate for foreign plaintiffs was 100% across a total of 63 civil cases, prompting foreign firms to reevaluate their prospects in China's civil IP litigation environment." (Goldberg)

Trademarks



Sources: Bailey and Clark (2020), Goldberg (2017), Xia (2020).

Validity rates per technology field (2015-2019) First instance, CNIPA PRB

### 40% v. 9% Validity Rates - Pharmaceuticals



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First appeared as part of the conference materials for the  
16<sup>th</sup> Annual Advanced Patent Law Institute session

"China Patent Update: Prior Art Explosion, Rapid Evolution of the CNIPA and Courts, and Filing and Prosecution Issues"