



Evolution of China's Patent Law & Improve Regulatory Environment

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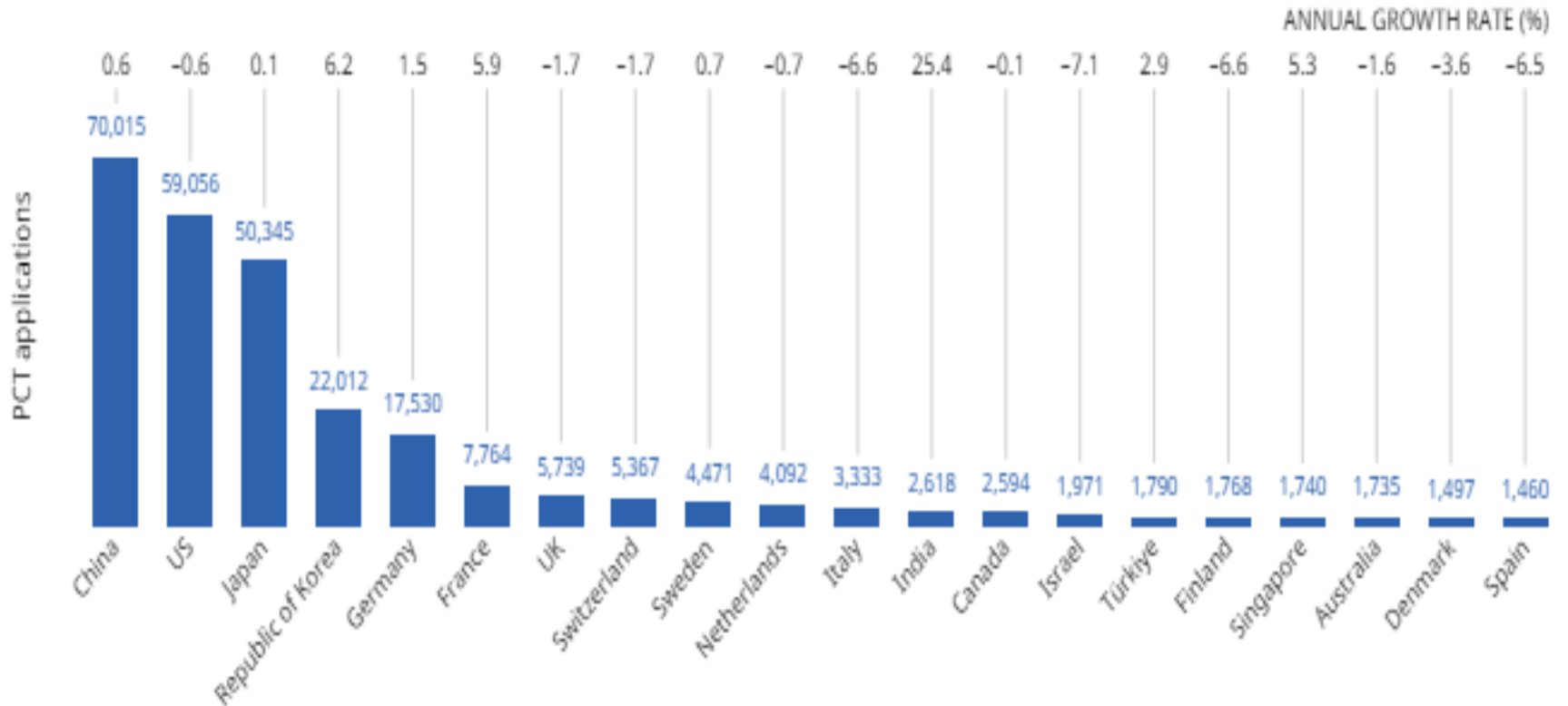
Top 20 – WIPO Global Innovation Index 2023

GII rank	Economy	Score	Income group rank	Region rank
1	Switzerland	67.6	1	1
2	Sweden	64.2	2	2
3	United States	63.5	3	1
4	United Kingdom	62.4	4	3
5	Singapore	61.5	5	1
6	Finland	61.2	6	4
7	Netherlands (Kingdom of the)	60.4	7	5
8	Germany	58.8	8	6
9	Denmark	58.7	9	7
10	Republic of Korea	58.6	10	2
11	France	56.0	11	8
12	China	55.3	1	3
13	Japan	54.6	12	4
14	Israel	54.3	13	1
15	Canada	53.8	14	2
16	Estonia	53.4	15	9
17	Hong Kong, China	53.3	16	5
18	Austria	53.2	17	10
19	Norway	50.7	18	11
20	Iceland	50.7	19	12

World's top Science and Technology Clusters
(WIPO Global Innovation Index 2023)

- Tokyo–Yokohama (Japan),
- Shenzhen–Hong Kong–Guangzhou (China and Hong Kong, China),
- Seoul (Republic of Korea),
- Beijing (China),
- Shanghai–Suzhou (China),
- Cambridge (UK),
- San Jose–San Francisco, CA, (US),
- Oxford (UK),
- Eindhoven (Kingdom of the Netherlands),
- Boston–Cambridge, MA (US)

PCT (Patent Cooperation Treaty) top 10 country applicants 2022



PCT top 10 business applicants in 2022

Ranking	Change in position from 2021	Applicant	Origin	Published PCT applications		
				2020	2021	2022
1	0	HUAWEI TECHNOLOGIES CO., LTD.	China	5,464	6,952	7,689
2	1	SAMSUNG ELECTRONICS CO., LTD.	Republic of Korea	3,093	3,041	4,387
3	-1	QUALCOMM INCORPORATED	US	2,173	3,931	3,855
4	1	MITSUBISHI ELECTRIC CORPORATION	Japan	2,810	2,673	2,320
5	3	TELEFONAKTIEBOLAGET LM ERICSSON (PUBL)	Sweden	1,989	1,877	2,158
6	0	GUANG DONG OPPO MOBILE TELECOMMUNICATIONS CORP., LTD	China	1,801	2,208	1,963
7	0	BOE TECHNOLOGY GROUP CO.,LTD	China	1,892	1,980	1,884
7	5	NIPPON TELEGRAPH AND TELEPHONE CORPORATION	Japan	1,372	1,508	1,884
9	-5	LG ELECTRONICS INC.	Republic of Korea	2,759	2,885	1,793
10	0	PANASONIC INTELLECTUAL PROPERTY MANAGEMENT CO., LTD.	Japan	1,611	1,741	1,776

China: patent legislation development

- 1984. Patent Law (administrative)
- 1992. Patent Law 1st (15y-20y, pharmaceuticals, chemicals patentable)
- 2000. Patent Law 2nd amendment
- 2004 Art.13 Constitution (3rd amendment)
- 2005. World's most IP litigious country
- 2008 Patent Law 3rd amendment
- 2012 World's 4th PCT applicant, after USA, JP, DE
- 2014. World's 2nd patent applicant
- 2020. Patent Law 4th amendment (coming into force 1 June 2021)
- 2020 China overtook the US on PCT patent application

Patent protection evolution

- Patent scope broader
- Threshold higher, e.g. from “relative” to “absolute” novelty
- Exploitation easier, e.g. 4th Patent Law new chapter on utilisation + commercialisation
- Compensation for patent term loss & higher damages
RMB 30,000 → 5,000,000 (EUR 3,818 → 636,357)
- 4th Patent Law: 15 years for design patent, a patent term compensation mechanism for invention patents, flexible reward (e.g. stock shares) & remunerations to inventors of service invention-creations, shift of the burden of proof, etc.

Regulatory weakness

– the ASI dispute

- Weak regulatory environment (in light of WIPO GII indicators), incl.
 - Regulatory quality
 - Rule of law
 - Cost of redundancy dismissal
- Disadvantages, incl. investment environment, detriment to itself in case of dispute with its trading partners,
 - China – Enforcement of intellectual property rights (DS611) – e.g. ‘anti-suit injunction system with Chinese characteristics’ (*Supreme People’s Court Report on Litigation Procedures in Patent and Other Intellectual Property Cases” of 27 February 2022*) vs. ZTE v Conversant & OPPO v Sharp with ‘Chinese nexus’ test

Regulatory weakness

– BEV subsidy dispute

In light of ‘public-private body’ argument / actionable subsidies:

e.g. Anti –subsidy investigation against Chinese BEVs

Are ‘state-owned banks and other financial institutions’ – ‘private body’ – on specific occasions – ‘governmental functions’ & the government ‘exercised meaningful control’ = ‘public body’

EC can prove its case conveniently as the financial institutions operate in a general legal environment. It may be the case, the relevant Chinese banking legislation is not helpful.

E.g. Art. 34 of the Chinese Bank Law: commercial banks act ‘under the guidance of the industrial policies’ of the government.

Arts 4 & 5 of the same law: commercial banks shall ‘make their own decisions’ and operate ‘without interference from any unit or individual’.

Conclusions

- Stay communicated with the rest of the world (e.g. ASI dispute, although due to extreme circumstances)
- Balance governmental regulatory powers & judicial legislative powers
- Further strengthen patent protection to
 - stimulate innovation,
 - technology transfer, etc.

请多指教