



# 中国知产在全球正受威胁

## Chinese IP under threat worldwide

怀揣国际化梦想的中国企业正面对重重困难，  
比如知识产权被侵犯是企业从未想到过的。

作者：Alfred Romann

*Chinese companies with a desire to go multinational face many obstacles. Some have encountered a problem they did not expect: violations of their intellectual property rights*

*By Alfred Romann*

如果提到知识产权，关于中国的话题多半是中国企业侵权，  
有这种想法是情有可原的。

中国是知识产权剽窃最泛滥的司法区域之一。本月，美国贸易代表办公室把中国同阿尔及利亚、印度、印度尼西亚、巴基斯坦、俄罗斯及委内瑞拉等一起列入最先观察国家名单，称这些国家没有充分保护美国的知识产权。

但时至今日，越来越多的中国企业出口面向小众市场，提供有价值的产品和服务。他们具有公认的品牌、专利及商标。据世界知识产权署统计，2009年中国提交了7,946项国际专利申请。

You would be forgiven for thinking that whenever China is mentioned in the same breath as intellectual property, the topic of conversation will be infringement by a Chinese party.

China is among the most pirate-infested IP jurisdictions. This month, the office of the US Trade Representative included China along with countries such as Algeria, India, Indonesia, Pakistan, Russia and Venezuela in its latest priority watch list of nations it says don't sufficiently guard US IP rights.

But nowadays, increasing numbers of Chinese companies are exporting valuable niche products and services with rec-

## 大多数中国企业还是第一代 知识产权所有人

*Most Chinese companies are first-generation owners of IP*



**M Ravindran**  
Ravindran Associates  
Singapore

”

虽然比较美国申请的53,000项专利,这个数字相形见绌,但仍在全世界排名第五;且在全球专利申请下降5%的大环境下,中国申请专利的项目比2008增长了近30%。

很明显,中国公司越来越着力于保护自身的知识财产。信息技术及工程专利的专家 Gill Jennings & Every 的伦敦合伙人 Stephen Haley 说:“中国企业想利用知识产权体系来获取竞争优势。”

这当然是个新趋势。新加坡 Ravindran Associates 律师事务所的 M Ravindran 说:“大多数中国企业还是第一代知识产权所有人,他们是近十年来才刚刚意识到要保护、培养及利用知识产权的。”

### 中国企业成为受害者

遍布海外的中国企业遭遇到知识产权侵权的问题,比其外资竞争者在中国境内遇到的多。曼谷 Domnem Somgiat & Boonma 公司的 Nettaya Warncke 说,比如在泰国,一家中国电信制造商遇到以前的某个不友好的经销商把该企业的名称注册成自己的商标,并以此混迹于该企业的营销网络。

Swaab 律师事务所的悉尼合伙人 Matthew Hall 说,中国知识产权所有人正在逐渐建立起优先使用权,打击品牌“抢注”,为中文商标的意译和音译建立适当的保护,并尝试理解商标和注册企业名称之间的区别,及处理商标权转让的定价问题。

最近,在与欧洲对手的知识产权争议中,中国企业获得了一些胜利。三一重工集团是总部位于长沙的建筑设备制造商,目前正进军欧洲市场,却遭到德国戴姆勒公司的起诉。戴姆勒在英格兰和威尔士高等法院提起诉讼,称三一集团的标志跟其梅塞德斯-奔驰的“三尖星”商标太相似。法官在其33页的判决书上驳回了戴姆勒的诉求。

在另一个案件中,杜威路博国际律师事务所受中国某软件公司委托,控告竞争对手仿制其软件应用及电子设备外形,侵犯其知识产权。杜威路博的米兰合伙人 Marco Consonni 说,意大利某法院已经判决侵权者败诉。尽管有以上之成功例子,Consonni 补充道“中国公司通常会担忧诉讼案件的处理会耗时过久”。

当然,中国企业并不总是原告。在巴黎, Cousin & Associés 律师事务所在多起诉讼中代表中国企业。Pierre Cousin 说,“在若

ognizable brands, patents and trade marks. According to the World Intellectual Property Organization (WIPO), China submitted 7,946 international patent applications in 2009. The figure is dwarfed by the 53,000 patents applied for from the United States, but is the fifth-highest number worldwide and represents an increase of nearly 30% over 2008 amid a global 5% decline in patent applications.

The trend is clear. Chinese companies are increasingly trying to protect their own IP assets. “They want to use the IP system to get a competitive advantage,” says Stephen Haley, a London partner at Gill Jennings & Every, who specializes in information technology and engineering patents.

But the trend is also very new. “Most Chinese companies are first-generation owners of IP,” says M Ravindran of Ravindran Associates in Singapore. “These companies only started recognizing, protecting, cultivating and leveraging off their IP in the past 10 years.”

### Chinese companies as victims

As Chinese companies spread abroad, they are facing issues more commonly encountered by their foreign competitors within China. In Thailand, for example, an angry former distributor of products for a Chinese telecoms manufacturer registered the company’s name as its own trade mark, says Nettaya Warncke of Domnern Somgiat & Boonma in Bangkok.

Matthew Hall, a Sydney partner at Swaab Attorneys, says Chinese IP owners are increasingly attempting to establish first use, overcome brand “squatters”, establish proper protection for translations and transliterations of Chinese marks, understand the difference between trade marks and registered business names and deal with transfer pricing issues.

Chinese companies have scored some recent successes in IP disputes with European rivals. Germany’s Daimler sued Sany Group, a Changsha-based maker of construction equipment that recently moved into Europe. Daimler filed a suit in the High Court of England and Wales, complaining that Sany’s logo was too similar to its own Mercedes-Benz “three-pointed-star” trade mark. A judge dismissed Daimler’s claim in a 33-page ruling.

In another case, Dewey & LeBoeuf worked with a Chinese software company against a competitor that had copied its IP in a software application and the shape of an electronic device. An Italian court granted an order against the infringer, says Milan partner Marco Consonni. (Despite this success, Consonni adds, “Chinese companies are usually worried about the length of our court cases.”)

Chinese companies are not always the plaintiffs, of course. In Paris, Cousin & Associés has acted on behalf of Chinese companies on several occasions. “They were defendants in patent infringement actions instituted by patentees,” says Pierre Cousin. In at least two patent actions, however, the claims against the Chinese companies were dismissed.

A fundamental point which is often overlooked is the importance of keeping track of actual ownership. “A number of Chinese companies are not performing proper trade mark clearance searches in Australia to determine if there are any competing businesses in Australia which have protected identical or similar brand names,” says David Stewart, managing director of Wrays Lawyers in Perth.

干专利权人提起的专利侵权诉讼案中，中国公司都是被告，不过至少有二起针对中国企业的专利诉讼请求被驳回。

最基本的，也是最容易被忽视的关键是追踪实际所有权。珀斯的 Wrays Lawyers 律师事务所的执行董事 David Stewart 说：“许多中国企业在澳大利亚没有进行适当的商标清查检索工作，以确定在澳是否已有竞争对手注册保护了相同的或类似的品牌名称。”

## 各地的法律

全球知识产权领域受国际公约体系监管。在《马德里协议》(1891)及《马德里备忘录》(1989)的基础上建立起来的马德里国际商标注册体系广泛运用于商标注册，且大多数国家都是签约国。

适用于其他类型的知识产权国际条约有《保护文学和艺术作品的伯尔尼公约》、世界贸易组织的《与贸易相关的知识产权协议》(简称TRIPS)以及《专利合作条约》(PCT)。

约翰内斯堡安永国际律师事务所的 Allison Gibbs-Williams 说：“主要的国际条约通常能对某些种类的知识产权提供对等的权利保护及最低程度的保护。”但是，并非所有主要经济体都是重要国际条约的缔约国。在较大的经济体中，加拿大、南非、阿根廷、泰国及印度还未加入马德里备忘录。

台湾是《专利合作条约》以外的少数主要司法区域之一，这就带来些困难。台北圣岛国际专利商标联合事务所的的恽轶群说：“我们中国大陆的客户想在台湾为其发明寻求保护，但基于《专利合作条约》申请的公告，该发明在台已经丧失新颖性，这种情况并不少见。中国企业的一项发明按《专利合作条约》注册或在国内提出专利申请后，应在12个月内就到台湾为该项发明提出专利申请。”

中国企业也可能因为海峡两岸的独特关系而面临特殊问题。台北理律法律事务所的王懿融说：“台湾与中国之间没有对专利和商标申请优先申明权的相互认可。台湾政府正在修订专利法、商标法及版权法，这可能会给知识产权实践带来重大改变。”

即便是各种国际协议的缔约国，也会存在本地壁垒。河内 Pham

## 中国公司通常会担忧诉讼案件的处理会耗时过久

*Chinese companies are usually worried about the length of our court cases*



**Marco Consonni**  
Partner  
Dewey & LeBoeuf  
Milan

## Laws of the lands

The global IP landscape is governed by a system of international conventions. The Madrid system for the international registration of marks (the Madrid Agreement of 1891 and the Madrid Protocol of 1989) is widely used for trade marks, and most countries are signatories.

For other types of IP, the Berne Convention for the Protection of Literary and Artistic Works, the World Trade Organization's trade-related aspects of intellectual property rights regime (known as TRIPS) and the Patent Cooperation Treaty (PCT) may apply.

The major international treaties “generally provide for reciprocal rights protection and minimum levels of protection in respect to certain kinds of IP,” says Allison Gibbs-Williams at Eversheds in Johannesburg. However, not all major economies are signatories to the major international conventions. Among the larger economies, Canada, South Africa, Argentina, Thailand and India have yet to join the Madrid Protocol.

Taiwan is one of the few major jurisdictions outside the PCT. This can present some difficulties. “It occurs not rarely that the inventions for which our [mainland] Chinese clients intend to seek protection in Taiwan have lost novelty in view of the publication of a PCT application,” says Patrick Yun of Saint Island International Patent and Law Offices in Taipei. “Chinese companies should be aware that a corresponding patent application must be filed in Taiwan within 12 months from the filing of the PCT or home application.”

Chinese companies may also face particular issues due to the unique relationship between Taiwan and China. “Mutual recognition of priority claim for patent and trade mark applications is not available between Taiwan and China,” says Daisy Wang of Taipei law firm Lee and Li. “The Taiwan government is now amending the Patent Law, Trade Mark Law and Copyright Law, which may result in significant changes to IP practice.”

Even countries that are signatories to international agreements can present local obstacles. In Vietnam, there can be difficulties with overlapping legislation, says Pham Vu Khanh Toan, managing partner of Pham & Associates in Hanoi. “Many issues are not elaborated by the law but regulated by various subordinate regulations, which cannot be tracked by persons who are not acquainted with the Vietnamese legal system,” he says (see *The IP world tour* on page 42).

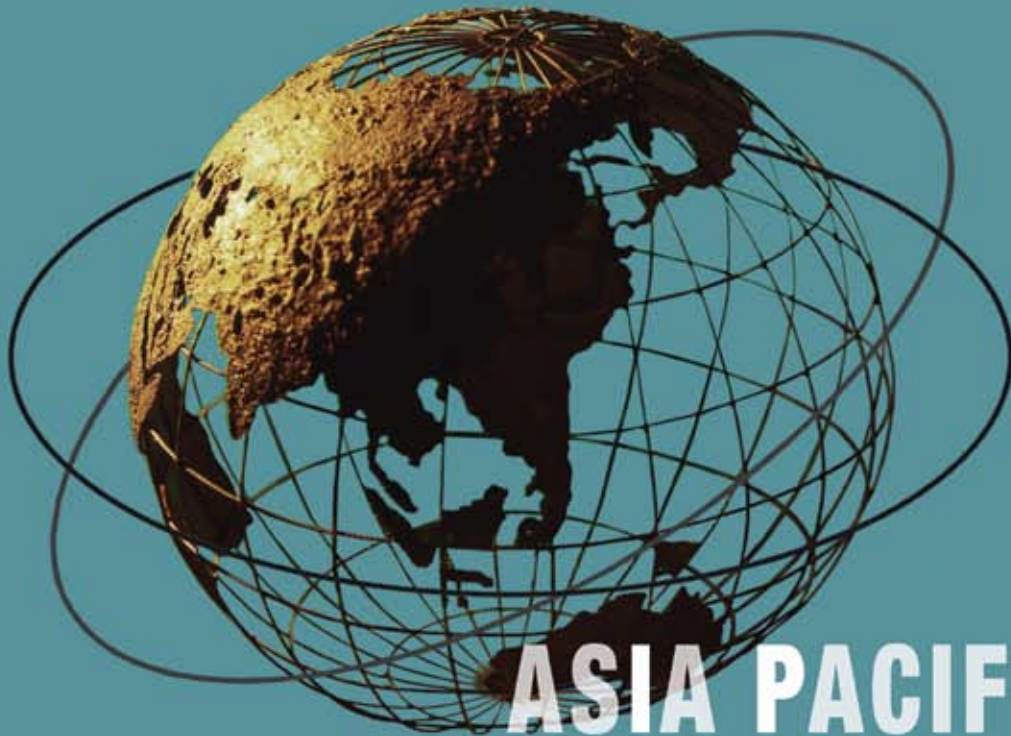
## Timing of the essence

No matter which country is involved, timing is crucial in the acquisition and registration of IP rights. Argentine firm Palacio & Asociados, for example, works with Sany, telecoms equipment manufacturer Huawei Technologies, car maker Great Wall Motor, computer major Lenovo, herbal medicine manufacturer Yunnan Baiyao and others. “In some locations, they find identical or similar trade marks already registered by their former importers,” says Diego Palacio, one of the firm's attorneys at law.

Latecomers to the Mexican market can also find their IP rights usurped by earlier arrivals. “[Chinese companies] got here later than, say, Japanese or South Korean corporations,” says Mariano Soní, a partner at Bufete Soní in Mexico City. “Perhaps some did not have the chance to enter the Mexican market any sooner.”

Brazil also exemplifies another timing issue common to many emerging economies: backlogs. “There is no political will to straighten out the situation and the backlog continues to increase daily,” says Denis Daniel, a partner at Daniel Abogados in Rio de Janeiro.

# 名字中蕴藏的力量



## ASIA PACIFIC

知产(IP)法不是飞泽知识产权律师事务所许多业务领域中的一面，它是我们唯一的焦点。

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714.540.8700

## 在协商、交易及起草合同时，文化差异不应被低估

*The cultural differences when it comes to negotiations, deals and drafting agreements should not be underestimated*



**Agnes Andersson**  
Associate  
Setterwalls  
Stockholm

& Associates 律师事务所的执行合伙人 Pham Vu Khanh Toan 说，在越南，重复立法会带来困境。许多问题在法律上没有详细规定，却在附属法规中有规定，不熟悉越南法律体系的人根本不可能理清这些法律法规的关系。”（见：《各国知识产权概览》）

### 时效的重要性

不论在哪个国家，时效对获取及注册知识产权至关重要。阿根廷 Palacio & Asociados 律师事务所与三一重工、电信设备制造商华为、汽车制造商长城汽车公司、电脑巨头联想、中草药制造商云南白药及其他中国企业都有合作关系。该所的律师 Diego Palacio 说：“在某些地方，中国企业发现其以前的进口商已经注册了相同或类似的商标。”

墨西哥市场的后到者也会发现他们的知识产权已被先来者侵占。墨西哥城 Bufete Soni 律师事务所的合伙人 Mariano Soni 说“中国企业进入墨西哥市场比日本或韩国的企业晚，或许早先他们并没有机会。”

许多新兴经济体中普遍存在把握时效的问题，巴西的例子是案件积压。里约热内卢 Daniel Abogados 律师事务所的合伙人 Denis Daniel 说“政府不愿意整顿这种情况，于是案件积压量每天持续增加。”有可能是因某些地区缺乏专利审查员或缺少合格的法官而造成了案件的积压。

在巴西及其他南美司法区域，中国的知识产权所有人因缺乏长远目光而致使他们陷入困境。圣保罗 David do Nascimento Advogados 的 Marcello do Nascimento 说：“最常见的问题是：在产品出口到我们国家或跟当地公司签署分销合同前没有进行知识产权注册。”

本土“监察”服务有助于确保迅速锁定侵权者，尤其是商标侵权人。中国和美国都是实施“优先申请制”的国家，就是说第一个注册人具有优先权。芝加哥 Davis McGrath 律师事务所的合伙人 Maureen Beacom Gorman 说：“即使中国企业取得了在美国的商标注册，此商标注册仍可能被之前的使用人取消，申请取消的期限自获取注册后起算达5年之久。”

These backlogs may, for example, stem from a shortage of patent examiners in some areas or a lack of qualified judges.

In Brazil and other South American jurisdictions, lack of foresight often afflicts Chinese IP owners. “The most common problem faced is not having registered IP rights before exporting products to our country or entering into distribution agreements with local companies,” says Marcello do Nascimento of David do Nascimento Advogados in São Paulo.

A local “watch” service can be useful to ensure that infringers, particularly of trade marks, are identified quickly. Both China and the US are “first to file” countries, which means that the first to register has priority rights. “Even if a Chinese company secures a US registration, it could face a cancellation of the registration by a prior user for up to five years after the registration is secured,” says Maureen Beacom Gorman, partner at Davis McGrath in Chicago.

In some emerging markets, concepts of time can frustrate even the most patient of IP rights holders. In Sri Lanka, for example, the National Intellectual Property Office (NIPO) is notoriously slow. The office has embarked on a programme of computerization but “the gargantuan task of data entry is not yet complete, and in certain classes, the examination of pending applications can take several years,” says John Wilson of John Wilson Partners in Colombo.

Lawyers in many Latin American countries complain of the glacial pace of bureaucracy (Editor’s note: see *El Dorado all over again?* in *China Business Law Journal* Volume 1 Issue 4, April 2010). “There is a particular slowness by the Argentine Trade Mark Office in registering the new holder with the certificate of a trade mark or a patent. The backlog goes up to 16 months,” says Dámaso Pardo, a lawyer at Pérez Alati Grondona Benites Arntsen & Martínez de Hoz in Buenos Aires.

More fundamentally, some emerging markets around the world are only now beginning to consider trade mark protection, particularly in the least developed countries in Africa. In Nigeria, for example, counterfeiting is rampant and enforcement is lacklustre, says Adeola Olumeyan of Lagos firm Jackson Etti & Edu.

### Translation and transliteration

The ever-present need for translation can produce another

**在某些地方，中国企业发现其以前的进口商已经注册了相同或类似的商标**

*In some locations, [Chinese companies] find identical or similar trade marks already registered by their former importers*



**Diego Palacio**  
Attorney at law  
Palacio & Asociados  
Buenos Aires

在某些新兴市场，时效的概念甚至可挫败最有耐心的知识产权持有人。比如，斯里兰卡的国家知识产权局（NIPO）办事效率之慢是众所周知的。该局已开始电脑化的程序管理，但是“庞大的数据输入任务还没完成，而且对于某些分类，未处理申请的审查会花费好几年时间。”科伦坡 John Wilson Partners 律师事务所的 John Wilson 如是说。

许多拉美国家的律师抱怨官僚系统的拖拉（编者注：见上月《商法》第35页）。布宜诺斯艾利斯 Pérez Alati Grondona Benites Arntsen & Martínez de Hoz 的律师 Dámaso Pardo 说“阿根廷商标局为新持有人注册商标或专利证书的效率尤为低下，积压时间可长达16个月。”

说到底，世界某些新兴市场现在才开始研究商标保护，特别是最不发达的非洲国家。比如，在尼日利亚，拉各斯 Jackson Etti & Edu 律师事务所的 Adeola Olumeyan 说：“假冒伪造泛滥，但执法缺乏力度。”

**意译和音译**

翻译人才和能力的缺乏，产生了另一瓶颈。在斯里兰卡，收到的全部申请均用英文、锡兰语和泰米尔语公布，但当地国家知识产权局缺少翻译人员。语言问题加上当地法

当中国企业在美国使用其产品很久之后才寻求知识产权保护，往往会出现问题

*Problems often arise when Chinese companies seek to protect their IP in the US long after usage here has already commenced*



”  
**Alan Behr**  
Partner  
Alston & Bird  
New York

bottleneck. In Sri Lanka, all applications received are published in English, Sinhala and Tamil but the NIPO has a shortage of translation staff. Language problems compound the local courts' lack of experience. "IP litigation is relatively uncommon so there is a lack of judicial precedents in areas of

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院缺乏经验。“知识产权诉讼相对较少，以至于某些法律具有不确定性的领域缺乏司法先例。” Wilson 说

另外，在一些国家有使用当地语言的规定。例如，南非要求所有文件应使用该国的 11 种官方语言中的一种。Gibbs-Williams 说，南非还规定文件必须由公证人员认证。

另一个常见的问题是不同语言表达的内容有很大不同。Davis McGrath 律师事务所的 Gorman 说：“商标的音译得到广泛关注。”她补充道，“例如，汉字是美国专利商标局设计代码的一部份。虽然能在商标注释中被检索到，但汉字商标的侵权风险审查工作更困难和昂贵。”

菲律宾知识产权律师说，菲律宾也有类似的情况发生。马尼拉 Fortun Narvasa & Salazar 的 Roderick Salazar 说：“中国商标持有人在注册申请时，如商标内容含有汉字，则需同时提供英文翻译及汉字的音译。”

## 文化障碍

中国企业赴海外经营时，必须按各个国家的实际情况对待知识产权保护。哥德堡 Setterwalls 律师事务所知识产权和科技业务部律师 Agnes Andersson 说：“在协商、交易及起草合同时，文化差异不应被低估，它可能成为获取知识产权或进行商业谈判的一项挑战。”

不过，Andersson 很乐观，他说：“大多数中国企业似乎都明白这些挑战，并找到了克服障碍的方法。” ■

uncertainty in the law,” says Wilson.

Other countries have, in addition, local language requirements. South Africa, for example, requires that all documents be in one of the country's 11 official languages. South Africa also requires documents be authenticated, typically by a notary public, says Gibbs-Williams.

Another problem is a very practical result of how different languages are written. “Transliteration of marks is a broad concern,” says Gorman at Davis McGrath. “Chinese characters, for example, are part of the USPTO design code, and, although they can be searched under the description of the mark, clearance of a Chinese character mark may be more difficult and more expensive,” she adds.

Something similar happens in the Philippines, say IP lawyers. “Chinese trade mark holders who have Chinese characters as part of their trade marks are required to provide the English translation and transliteration of said characters in their trade mark applications,” says Roderick Salazar of Fortun Narvasa & Salazar in Manila.

## Cultural barriers

For Chinese companies venturing overseas, IP protection must be approached country by country. “The cultural differences when it comes to negotiations, deals and drafting agreements should not be underestimated and can be a challenge when acquiring IP and negotiating business deals,” says Agnes Andersson, an associate at the IP and technology practice at Setterwalls in Gothenburg. Andersson, nonetheless, is optimistic. “Most Chinese companies appear to understand these challenges and find ways to overcome barriers.” ■

# 各国知识产权概览

## The IP world tour

《商法》对部分国家的知识产权保护和执法情况做了以下简要的分析。

### 东盟

东盟成员国的情况各不相同，但都是知识产权受到大量侵害的国家。吉隆坡 Kass International 的 Ramakrishna Damodharan 表示：

“由于东南亚国家彼此邻近，侵权行为可能在几个国家同时发生。中国企业也必须了解平行进口问题。”东盟成员国包括文莱、缅甸、柬埔寨、印尼、老挝、马来西亚、菲律宾、新加坡、泰国和越南。

### 澳大利亚

在亚太地区，发展中国家并非滋生各种新型侵权行为的唯一温床。墨尔本的一家知识产权专业事务所 Choy Lawyers 的 Trevor Choy 指出，在澳大利亚，一批印度企业必需面对一名活跃的侵权者，该侵权者认识到一些最知名的印度消费品商标并未在澳注册。


China Business Law Journal offers a brief analysis of intellectual property protection and enforcement in selected countries across the world.

### ASEAN

Members of the Association of South East Asian Nations are a disparate group but share high levels of IP violations. “Due to the close proximity between the south east Asian countries, the infringing acts can take place in a few countries simultaneously,” says Ramakrishna Damodharan of Kass International in Kuala Lumpur. “Chinese companies must also be aware of parallel import issues.” The member countries of ASEAN are Brunei Darussalam, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam.

### Australia

Developing countries are not the only ones in the Asia-Pacific region that make a good home for creative breaches. In Australia, a group of Indian companies had to deal with an aggressive squatter



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ADVOGADOS

SOUZA CESCUN IS A FULL SERVICE BRAZILIAN LAW FIRM AND A RECOGNIZED LEADER IN STRUCTURED AND PROJECT FINANCE, MERGERS AND ACQUISITIONS, BANKING AND CAPITAL MARKETS, TAX, ANTITRUST AND DISPUTE RESOLUTION. THE FIRM HAS DEEP KNOWLEDGE OF THE ASIAN MARKET AND ONE OF THE LARGEST DEDICATED ASIA DESKS IN BRAZIL.

BRAZIL

SÃO PAULO RIO DE JANEIRO BELO HORIZONTE

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## 加拿大

多伦多布雷克律师事务所的合伙人 Sheldon Burshtein 表示，中国企业在加拿大并不存在严重的知识产权问题。布雷克于1998年在北京设立了代表处，向客户提供关于加拿大法律的咨询服务。

许多知识产权纠纷起源于中国企业对加拿大企业的并购。多伦多 Bereskin & Parr 的合伙人 Bhupinder Randhawa 表示：“国际公司应该就竞争、税务及其他一切会涉及知识产权的转让或企业拥知识产权的问题获得咨询意见。”

## 欧盟

与美国专利商标局类似，欧洲专利局对于专利说明书的内容和修订有繁琐的正式要求。伦敦 Carpmaels & Ransford 的合伙人 Paul Howard 指出：“在自主知识产权向外国发展的过程中，确保原始知识产权的拟定符合正式要求的具体规定是极其重要。”

欧洲的优势在于其众多市场的法规大同小异。如比利时虽有些自身特点，但正如美国众达律师事务所布鲁塞尔分所的合伙人 Howard Liebman 指出的，比利时“已经通过各种国际条约，高度融入欧洲和国际知识产权保护和监管网络。”

但决不要因此就认为欧盟国家的立法完全相同。维也纳专利代理 Haffner & Keschmann 的 Thomas Haffner 指出奥地利的知识产权体制“并不独特”；瑞典的立法没有完全与欧盟法律实现一体化，而且它正在拟定一项新的商标法案。

在欧盟内部（即使是小国家），权利人在申请商标注册或其他知识产权时很少碰到麻烦。都柏林 William Fry 的律师 Leo Moore 指出：“对许多中国企业而言，在爱尔兰的获得知识产权申请，或并购拥有知识产权的爱尔兰企业极具优势。”

荷兰是另一个非常重要的小国，如海牙 Bird & Bird 的共同执行合伙人 Armand Killan 指出的，荷兰“是欧洲的主要港口，在必要时，可以直接在荷兰边境保护您的产品。”

在欧洲有各种申请保护知识产权的方式，其中一些方式是非常有效的。比如，只需一次性商标注册，国际商标协调办公室即会在全



“走出去”的中国企业知识产权问题困难重重  
IP problems pile up for Chinese companies overseas

who realized that some of the best-known Indian consumer trade marks were not registered, says Trevor Choy of Choy Lawyers, a specialist IP firm in Melbourne.

## Canada

Canada does not present any significant problems for Chinese companies, says Sheldon Burshtein, a Toronto partner at Blake Cassels & Graydon, which opened a Beijing office in 1998 to advise clients about Canadian law.

Many IP issues in Canada arise out of Chinese corporations' acquisition of Canadian companies. "International companies should obtain advice regarding competition, tax and other issues, all of which can affect transfers of IP or companies that own IP," says Bereskin & Parr partner Bhupinder Randhawa in Toronto.

## European Union

The European Patent Office, like the US Patent and Trade Mark Office, has onerous formal requirements for the content and amendment of patent specifications. "Of critical importance in extending home-grown IP rights to foreign jurisdictions is ensuring that the original IP rights are drafted to comply with the detailed formal requirements," says Paul Howard, a partner at Carpmaels & Ransford in London.

Europe has the advantage of a number of markets with broadly similar regulations. Belgium, for example, has a couple of quirks but "is highly integrated in the European and international network of intellectual property protection and regulation via the various governing international treaties," says Howard Liebman, a partner at Jones Day in Brussels.

Never assume, however, that EU countries have identical legislation. Although Thomas Haffner of Vienna patent agent Haffner & Keschmann describes the Austrian IP regime as "not particularly unique", legislation in Sweden is not yet fully integrated with EU law and a new trade mark act has been proposed.

But there are few places in the EU where IP owners have difficulty registering their trade marks or other IP – even in the EU's smaller countries. "Acquiring Irish IP, or companies in Ireland with IP, has proven to be of significant advantage to many Chinese companies," says Leo Moore, an associate at William Fry in Dublin.

The Netherlands is another small but important location because it "is the main port to Europe and when needed, you want to be able to protect your products directly at the Dutch border," says Armand Killan, co-managing partner of Bird & Bird in The Hague.

There are various ways to file for protection in Europe, some of which are more effective than others. For example, the Office of Harmonization for the Internal Market (OHIM) can offer protection in all 27 EU members with a single trade mark registration. Filing through the WIPO in Geneva, which administers the Madrid Protocol, can also result in protection in dozens of markets.

These approaches offer the obvious advantage of speed, affordability and practicality from a distance. However, that distance can also work against IP rights holders. "When a problem arises in the form of an official objection or disputes with third parties, they have to quickly enlist the services of a specialized firm," says Luis Soriano, an associate partner at Elzaburu in Madrid.

Across Europe, meanwhile, border protection for IP rights is improving. "The Customs services in the different EU countries are all fully coordinated [through the Community Customs Code]

部27个欧盟成员国国内提供保护。通过日内瓦的世界知识产权组织（该组织负责管理马德里备忘录）提出申请也可以在许多市场上获得保护。

这些方式可为远距离的当事人提供效率、费用和实用性上各种优势。但这种距离也可能对知识产权权利人不利。马德里 Elzaburu 的副合伙人 Luis Soriano 指出：“如发生的问题属于正式异议或与第三方发生纠纷，则当事人必须立即获取专业事务所的支持。”

同时，欧洲的边境知识产权保护正在改善。Elzaburu 事务所的 Soriano 指出：“各欧盟国家的海关部门（通过《共同体海关法》）正在开展充分的协作，一次申请即足以在欧盟及其27个成员国的整个边境实施严密监督。”

在欧盟的某个成员国使用商标是否代表了在全体成员国使用该商标，这是欧洲内部持续进行的一项争论。伦敦 Nabarro 事务所的资深律师 Eesheta Shah 指出：“许多中小型品牌所有人希望通过单一成员国进入欧洲市场。”

欧盟成员国包括奥地利、比利时、保加利亚、塞浦路斯、捷克、丹麦、爱沙尼亚、芬兰、法国、德国、希腊、匈牙利、爱尔兰、意大利、拉脱维亚、立陶宛、卢森堡、马耳他、荷兰、波兰、葡萄牙、罗马尼亚、斯洛伐克、斯洛文尼亚、西班牙、瑞典和英国。

## 法国

在法国的侵权或甚至涉嫌侵权的案件中，扣押属于重点问题。曾担任华为代理人的一家巴黎知识产权事务所 Cabinet Regimbeau 的合伙人 Evelyne Roux 及 Jerome Collin 指出：“不幸的是，外国企业由于自身的偏见，只有以身试法后才真正能发现扣押属于非常有力的法律程序。”（请同时参阅上文欧盟部分）

## 希腊

2010年春，希腊遭到了负面报道。虽然该国是所有主要知识产权条约和公约的签约国，但延迟处理是其主要问题。一家雅典律师事务所 A&K Metaxopoulos & Partners 的 Irimi Daroussou 指出：“希腊民事和刑事司法体制中的严重问题是执行时毫无理由的延迟，导致了案件经常停审。”

值得肯定的是，许多公开和私人的倡议希望深化希腊和中国之间的合作。雅典 Dr Helen G Papaconstantinou John V Filias & Associates 的律师 Michael Paroussis 指出：“总体而言，希腊是中国是进入欧盟和西方的有利通道。”（请同时参阅上文欧盟部分）

## 印度

关于在印度投资的中国企业知识产权保护的报道和分析，请参阅第80—81页“海外知识产权保护（印度）”的定期报道。

## 以色列

在以色列，除有明确的弃权之外，在地方学术机构、国家机关或国家附属单位的帮助下开发出来的知识产权属于单位。耶路撒冷

and thus a single application suffices to institute seamless surveillance along the entire border of the EU and its 27 member countries,” says Soriano at Elzaburu.

An ongoing debate in Europe has to do with whether use of a trade mark in one member of the European Union represents use in all of them. “Many small and medium-sized brand owners would be likely to enter the European market through a single member state,” says Eesheta Shah, a senior associate at Nabarro in London.

The member states of the European Union are Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

## France

In France, seizures are an issue in cases of infringement, or even suspected infringement. “Unfortunately foreign companies often discover this very powerful proceeding only when they experience it, at their own prejudice,” says partner Evelyne Roux and Jerome Collin at Cabinet Regimbeau, a Paris-based IP firm that has represented Huawei. (See also *European Union*, above.)

## Greece

Greece has hit the headlines for the wrong reasons in 2010. In IP terms, while the country is a party to all major IP treaties and conventions, delays are a major problem. “A very significant problem of the civil and criminal Greek judicial system is that of unwarranted delays in enforcement, caused due to the frequency of cases’ adjournments,” says Irimi Daroussou of A&K Metaxopoulos & Partners, an Athens law firm.

A positive note is the number of public and private initiatives to deepen cooperation between Greece and China. “In general, Greece counts for China as a gateway to the European Union and the West,” says Michael Paroussis, an attorney with Dr Helen G Papaconstantinou John V Filias & Associates in Athens. (See also *European Union*, above.)

## India

For coverage and analysis of IP protection for Chinese companies investing in India, please turn to our regular Correspondents column, *IP protection overseas (India)*, on page 80-81.

## Israel

In Israel, IP developed with the help of local academic institutions, state entities or state-affiliated entities is held by the institution unless there is a specific waiver. If the office of the chief scientist provided support, then it has to approve any transfer of ownership, says Yoheved Novogroder-Shoshan at Yigal Arnon & Co in Jerusalem.

## Japan

In Japan, received wisdom states that infringement is less rampant than in other countries in the region. “Japanese corporations are always very active to protect and enforce their intellectual property rights against Chinese parties in the Chinese market,”

Yigal Arnon & Co 的 Yoheved Novogroder-Shoshan 指出, 如果有首席科学家办公室的支持, 则必须批准所有权的转移。

## 日本

在日本, 一般认为侵权行为没有像该地区的其他国家那么严重。东京 Yuasa and Hara 的律师 Kozo Yabe 指出: “针对中国市场内的中国当事人, 日本企业始终积极地保护和实施其知识产权。”

“反之却很少发现中国企业在日本实施其权利” Yuasa 说。曾经有进入日本市场的企业没有采取足够的保护措施。某个侵权者在日注册了中国在线搜索引擎百度的名称, 百度费尽了时间和金钱才取回名称注册权。

## 科威特

科威特对于获得版权保护的主体资格的要求非常苛刻。负责 Al Ruwayeh & Partners 国际业务部的 Sam Habbas 指出, 版权法“限于某些类型作者的作品”, 包括科威特国民、其他阿拉伯作者以及首次在科威特出版的作品。

## 拉丁美洲

拉丁美洲内各类市场的知识产权制度差异巨大。渥太华 Borden Ladner Gervais 的专利代理人 Mukundan Chakrapani 指出, 在中国以外, 加拿大的知识产权数量正在增长。根据拉巴斯 Bufete Aguirre 的律师 Perla Koziner 的说法, 玻利维亚也发现大批的中国企业正寻求保护其知识产权。

巴西是拉丁美洲大陆最大的市场。Di Blasi Parente Vaz e Dias & Associados 的 Jose Carlos Vaz e Dias 指出: “中国投资者在巴西面临的最大问题是造假行为。”

## 巴基斯坦

在巴基斯坦, 许多纠纷涉及邻国印度。SurrIDGE & Beecheno 卡拉奇办事处的合伙人 Khurram Rashi 指出: “我们发现, 一些来自境外的著名标志及其他知识产权在巴基斯坦注册, 而实际权利人并不知情。”

## 菲律宾

菲律宾也是优先申请原则的司法管辖区, 在该国, 执法问题牵涉全局。马尼拉 Cochingyan & Peralta 的资深合伙人 Anthony Peralta 指出: 企业“难以获得针对造假侵权人的限制令, 且有司法程序冗长、缺乏针对造假侵权人的司法制裁以及知识产权法律执法等问题。”

最大的问题可能是延迟处理。马尼拉 Esguerra & Blanco 的执行合伙人 Ramon Esguerra 指出: “尽管知识产权局被认为是菲律宾最高效的政府部门之一, 但通常获得商标注册或专利的申请程序仍需费时数年。”

says Kozo Yabe, a patent attorney at Yuasa and Hara in Tokyo.

The reverse is less true. “We rarely see Chinese corporations [enforcing] their rights in Japan,” Yabe adds. There have been cases, however, of companies entering the market that were not quick enough with protection efforts. An infringer registered the name of the Chinese online search engine Baidu in Japan and the company had to spend time and money to get it back.

## Kuwait

Kuwait is picky about who gets copyright protection. The Copyright Law “is limited to the works of certain types of authors,” says Sam Habbas, who heads the international department of Al Ruwayeh & Partners, including Kuwaiti nationals, other Arab authors and works published for the first time in Kuwait.

## Latin America

Latin America encompasses a diverse group of markets with widely differing IP regimes. Mukundan Chakrapani, a patent agent at Borden Ladner Gervais in Ottawa, says the amount of IP out of China is on the rise in Canada. Bolivia has also seen an influx of Chinese companies looking to protect their IP, according to Perla Koziner, an attorney at Bufete Aguirre in La Paz.

Brazil is the continent’s largest market. “The biggest problems faced by Chinese investors in Brazil are those related to counterfeiting activities,” says Jose Carlos Vaz e Dias of Di Blasi Parente Vaz e Dias & Associados.

## Pakistan

In Pakistan, many disputes relate to neighbouring India. “We have seen that some well-known marks and other IP from across the border get registered in Pakistan without the actual owner’s knowledge,” says Khurram Rashid, a partner in the Karachi office of SurrIDGE & Beecheno.

## Philippines

Another first-to-file jurisdiction is the Philippines, a country where enforcement issues run the gamut. Companies “encounter difficulty in getting restraining orders against counterfeiters, the possibility of lengthy judicial proceedings, the lack of judicial sanctions against counterfeiters and problems in the implementation of IP laws,” says Anthony Peralta, a senior partner at Coching-



菲律宾: 渡日如年的生活  
Time moves slowly in the Philippines

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菲律宾试图加强其知识产权法律法规,但如马尼拉 Villaraza Cruz Marcelo & Angangco 的 Bienvenido Somera 指出的:“这些努力往往在执行过程中被付之东流,主要是因为行政系统人手不足、相关部门之间缺乏协调、官僚作风以及法律和规则的适用不统一。”(请同时参阅上文东盟部分)

## 葡萄牙

葡萄牙事务所 AM Pereira Sáragga Leal Oliveira Martins 知识产权业务负责人 Manuel Lopes Rocha 表示,盗版和假冒行为猖獗在该国是最大的挑战。一些欧盟国家的法院反应迟缓,葡萄牙近期情形依然如此,直至通过实施欧洲委员会知识产权执行指令(2004/48/EC)的 16/2008号法案才有所改善。

Lopes Rocha 说:“这是葡萄牙近期巨大的进步和转折点。” Rocha 还指出:“现在,我们拥有法律规定的快速处理措施,以及关于赔偿的全新框架制度。知识产权的所有人现在可以信任葡萄牙及其法院。过去的风险实际上已经消失,在某些案例中,与欧洲标准相比,我们的法院反应更迅速。”(请同时参阅上文欧盟部分。)

## 南非

比勒陀利亚 Spoor & Fisher 的 Joseph Lin 表示,商标侵权(与商标权利人无关者将权利人的商标进行注册)在南非是反复出现的问题。他说:“商标侵权对中国专有权人而言是一个日益严重的问题。”

## 西班牙

巴塞罗纳的顾博国际律师事务所的 Jorge Llevat 指出,西班牙的规则与欧盟其他国家以及主要国际公约保持一致。Llevat 提醒当事人注意:“必须考虑的是,在某些案例中,使用商标较少的情况可能导致该商标被注销,或授予强制性许可(专利案件中),并且还会影响寻求临时性免除的可能性。”

西班牙国会最近通过了一条打击互联网知识产权侵权的新法律,规定载有非法内容的网站可以立即予以关闭。

律师们表示,西班牙法院数年之前才开始专注知识产权问题。马德里 Abril Abogados 的合伙人 Ignacio Temiño 指出,现在法院对诸如信誉等具体问题投入更多时间去研究,但 Temiño 提醒当事人注意:“对未曾在西班牙使用过的驰名商标,当地法院不承认也不会授予任何保护措施。(请同时参阅上文欧盟部分。)

## 土耳其

在土耳其,未经授权而注册商标的行为非常猖獗。伊斯坦布尔 Mehmet Gün & Partners 的一位合伙人 Uğur Aktekin 指出:“实际上,这个问题不仅是印度或中国企业面对的问题,也是所有外国企业面临的普遍问题。”

yan & Peralta in Manila.

The biggest problem may be delay. “Though the Philippine Intellectual Property Office is considered one of the most efficient government agencies, processing of applications for the grant of trade marks or patents generally still takes years,” says Ramon Esguerra, managing partner of Esguerra & Blanco in Manila.

The Philippines has tried to strengthen its IP laws and regulations “but these efforts are usually watered down when it comes to actual enforcement, mainly because of understaffed bureaucracies, lack of coordination among concerned agencies, red tape, and inconsistent application of laws and rules,” says Bienvenido Somera of Villaraza Cruz Marcelo & Angangco in Manila. (See also ASEAN, above.)

## Portugal

Manuel Lopes Rocha, who heads the IP practice at Portuguese firm AM Pereira Sáragga Leal Oliveira Martins, says aggressive piracy and counterfeiting may be the largest challenge. Courts in some EU countries can be slow in responding and, until recently, that was the case in Portugal until the passage of *Law 16/2008*, which implemented the European Commission’s *IP Rights Enforcement Directive (2004/48/EC)*.

“[This] is a great recent development in Portugal, the great turning point in Portugal,” says Lopes Rocha. “Now we have fast measures provided by law and a totally new framework concerning compensation. An IP owner can now trust Portugal and its courts. The risks from the past have practically disappeared and in some cases our courts are even faster than European standards,” adds Rocha. (See also *European Union*, above.)

## South Africa

Trade mark piracy, when a trade mark is registered by someone without any relationship to the owner, is a recurrent issue in South Africa, says Joseph Lin of Spoor & Fisher in Pretoria. “Trade mark pirating is an increasing problem for Chinese proprietors,” he says.

## Spain

The rules in Spain are in line with other EU countries and major international conventions, says Jorge Llevat of Cuatrecasas Gonçalves Pereira in Barcelona. “It has to be taken into account that lack of use may result in some cases in cancellation of a



西班牙的专门技术  
Spanish know-how

## 美国

美国是世界上知识产权最大产生国，美国的法律需要认真分析。

纽约 Alston & Bird 的合伙人 Alan Behr 说：“我们已为亚洲和其他地区的客户担任法律顾问，提供关于遵守美国知识产权法律重要性的法律意见。”在商标申请过程中，具体的挑战在于按照美国专利商标局的要求协助列明货物和服务的显著特征。

Behr 说，中国企业需要了解美国版权的独特性。他指出：“版权非常依赖注册制度，受雇完成的作品和公平使用的作品（此类概念有时会引起混淆）有法定的规定。”“当中国企业在美国使用其产品很久之后才寻求知识产权保护，往往会出现问题。”

## 越南

胡志明市泰运法律事务所的知识产权律师 Do Anh Tuan 指出，越南也是实行优先申请制度的司法管辖区，当企业取得一项商标时，必须确认（而不只是估计）已经提出商标申请。“如果企业自己开发了知识产权，则应当尽快注册。”

越南经济的不断发展导致假冒产品盛行。胡志明市 Indochine Counsel 的执行合伙人 Dang The Duc 指出：“对知识产权侵权的主要补救办法是行政手段加上处罚，但这些都认为不足以阻止进一步的侵权。”

河内贝克·麦坚时的合伙人 Manh Hung Tran 说，侵权者不一定是大型或知名的企业，通常是些小型的供应商和未注册的公司。他指出：“随着越南市场愈来愈复杂，侵权者对知识产权问题也更加精明。”

在越南，被侵权人可以利用行政、民事和刑事等手段补救。河内 Vision & Associates 负责知识产权业务的合伙人和副总监 Do Quang Hung 指出：“但行政程序是目前最有效的方式。”（请同时参阅上文东盟部分。）■



侵权者往往是小商贩  
Infringers are often small vendors

trade mark or compulsory licences being granted (in the case of patents), and it may also affect the ability to ask for interim relief,” Llevat warns.

Spain’s parliament recently passed a new law against IP infringement on the internet, which means websites with illegal content can be quickly shut down.

Lawyers say that Spanish courts started to specialize in IP only a few years ago. Ignacio Temiño, a partner at Abril Abogados in Madrid, says the courts now spend more time on specific issues such as reputation. However, Temiño warns, “the Spanish courts do not acknowledge, nor do they grant any protection for reputed marks which have not been used in Spain.” (See also *European Union*, above.)

## Turkey

In Turkey, unauthorized registrations of trade marks are rampant. “In fact this problem is not specific only to Indian or Chinese companies but a common problem for all foreign companies,” says Uğur Aktekin, a partner at Mehmet Gün & Partners in Istanbul.

## United States of America

The biggest producer of IP in the world, the US, has legislation that requires careful analysis.

“We have counselled clients from Asia and elsewhere on the importance of compliance with US IP law,” says Alan Behr, a partner at Alston & Bird in New York. “A particular challenge has been to assist with the requirement of the US Patent and Trade Mark Office that goods and services be listed with great particularity in trade mark applications.”

Behr says Chinese companies need to be aware of the uniqueness of US copyright. “[It] relies heavily on a registration system and has statutory provisions for works made for hire and for fair use – concepts that can sometimes be confusing,” he says. “Problems often arise when Chinese companies seek to protect their IP in the US long after usage here has already commenced.”

## Vietnam

Vietnam is another first-to-file jurisdiction and, when companies acquire a trade mark, they have to make sure – not merely assume – that it has been filed, says Do Anh Tuan, an IP lawyer at Russin & Vecchi in Ho Chi Minh City. “If they have developed IP rights, they should register as soon as possible.”

Vietnam’s growing economy makes it attractive for counterfeit products. “The main remedies applied for settlement of infringement over IP rights are administrative ones with penalties that may be considered not adequate to prevent further infringements,” says Dang The Duc, managing partner of Indochine Counsel in Ho Chi Minh City.

Infringers are not necessarily big or identifiable corporations but often small vendors and unregistered companies, says Manh Hung Tran, a partner at Baker & McKenzie in Hanoi. “As the Vietnam market becomes more sophisticated, infringers have also become more IP savvy,” he says.

Administrative, civil, and criminal remedies are available to infringed parties in Vietnam. “However, administrative procedures are currently the most effective way,” says Do Quang Hung, a partner and deputy director of the IP practice at Vision & Associates in Hanoi. (See also *ASEAN*, above.) ■