



BUSINESSES FACE IP RISK FROM PRC COURTS AND LEGAL SYSTEM

In recent years China has developed two powerful legal tools to institutionalize and protect rampant IP theft by PRC businesses; this despite Beijing's many promises to strictly enforce IP laws. As competition between the United States (and its allies) and China continues to intensify, these tools are likely to be used with increasing frequency. In addition, new legal tools are likely to be developed to protect and legitimize PRC theft of IP.

ANTI-SUIT INJUNCTIONS

Since 2020, PRC courts have begun granting so-called "anti-suit injunctions" to block non-PRC companies from taking legal action in any other country, except China, to protect their IP.

The most common scenario is as follows: A foreign company believing a PRC company has stolen their IP intends to file suit in their country of origin. In anticipation of this potential lawsuit, the PRC company seeks an anti-suit injunction from a PRC court. Once granted the PRC court may then fine the foreign company until the foreign lawsuit is dropped (in some cases the PRC courts have threatened fines of up to \$1 million per week). The foreign company is then "forced" to litigate their IP claims in a PRC court. Many foreign companies have complained that PRC courts are rarely equitable in those lawsuits, i.e., where a foreign company is adverse to a PRC company (see *Political-Legal System* below).

PATENT NULLIFICATION

Starting around the same time as the anti-suit injunctions, China began nullifying the patents of some foreign firms through its courts and patent panels. In most cases, the patents are nullified after a dispute has arisen between a foreign firm and a PRC firm as to who ultimately holds the patent rights in question.

These disputes can follow the end of a joint venture or, as has happened with some Japanese firms, after the foreign firms have refused to license their technology to a rival PRC company. The focus of the patent nullification appears to be in certain key industries over which the United States and China are competing, including pharmaceuticals, emerging technology and rare earths.

POLITICAL-LEGAL SYSTEM

Despite an outward appearance of judicial independence, the PRC legal system is tightly controlled by the Chinese Communist Party (CCP). China's courts at all levels are supervised by the CCP through various central, provincial, and local party committees. Through these committees, the CCP is able to not only shape judicial policies, but also **control the outcome in specific cases**.

This strict control allows the CCP to use the country's judicial system to support its technology acquisition goals, while being cloaked in the legitimacy of an ostensibly equitable legal process. By combining tools such as anti-suit injunctions and patent nullification, the CCP is able pull legal disputes with foreign companies into the PRC legal system. Those suits, because of the CCP's strict supervision of such cases, are highly likely to be ultimately decided in favor of the PRC company.