

# China: Patent LAW

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# THE GOOD NEWS

China really believes in Patents

# THE BAD NEWS:

China really believes in Patents

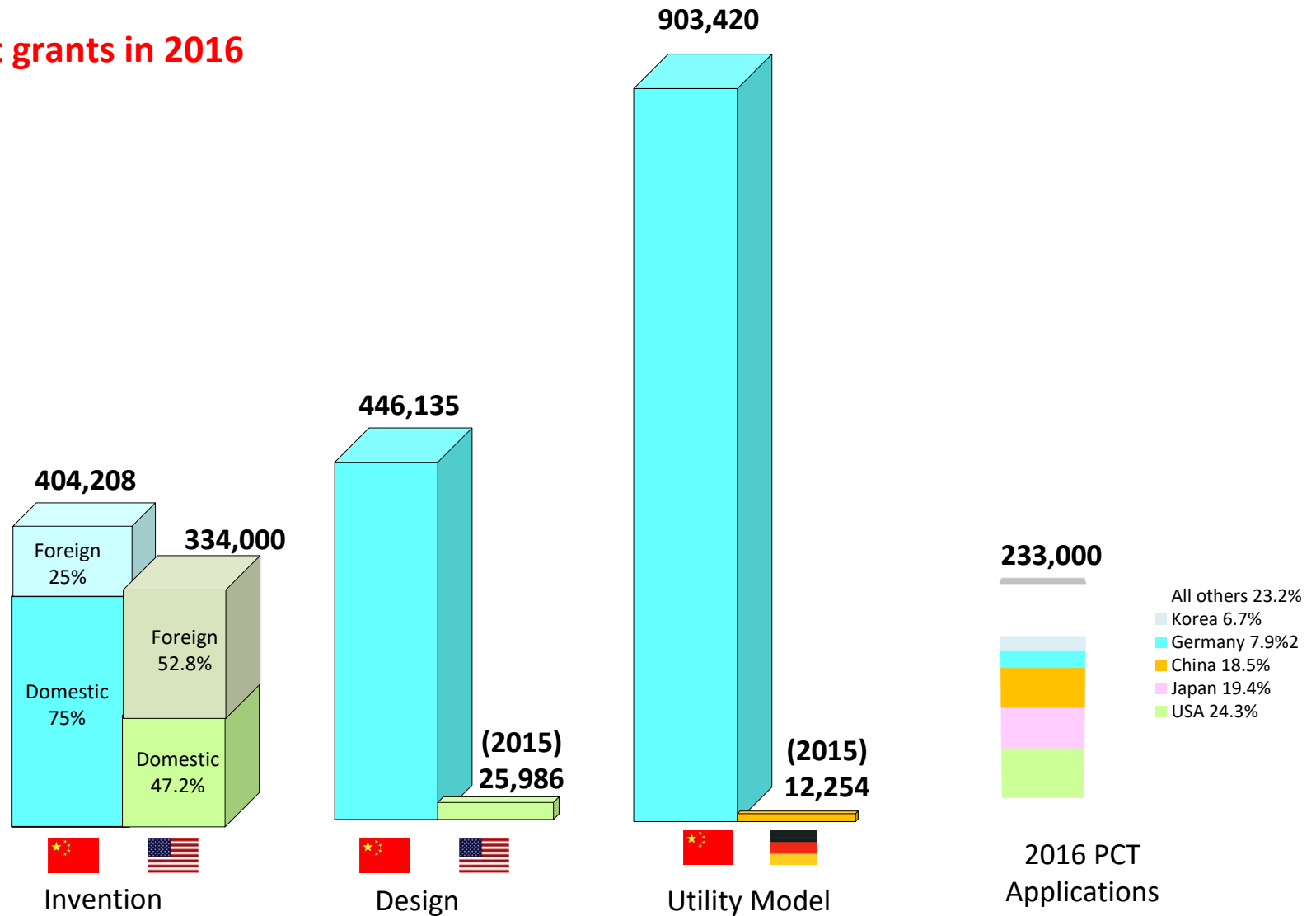
**GOOD NEWS**

# Patent Comparison between the US and China

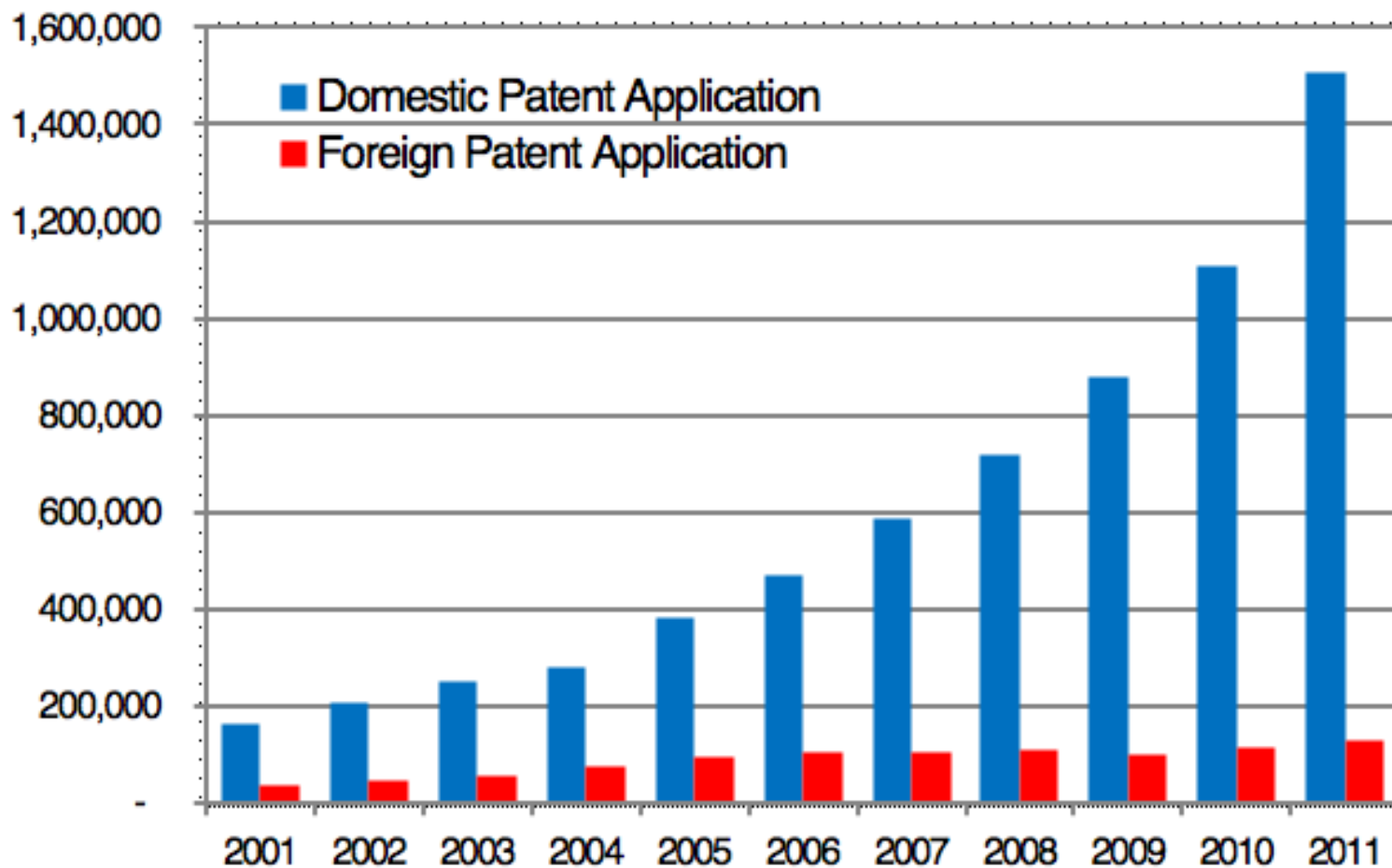
	U.S.	China
Patents Granted In 2016	334,000	>1,750,000
Substantive Examination	100%	<20%
Patent Infringement Lawsuits in 2016	4,351	12,357
Average Time To Trial	> 24 mos	9 mos
Permanent Injunction Frequency	about 75%, but uncertain always	>90%

# Patent Assets In China

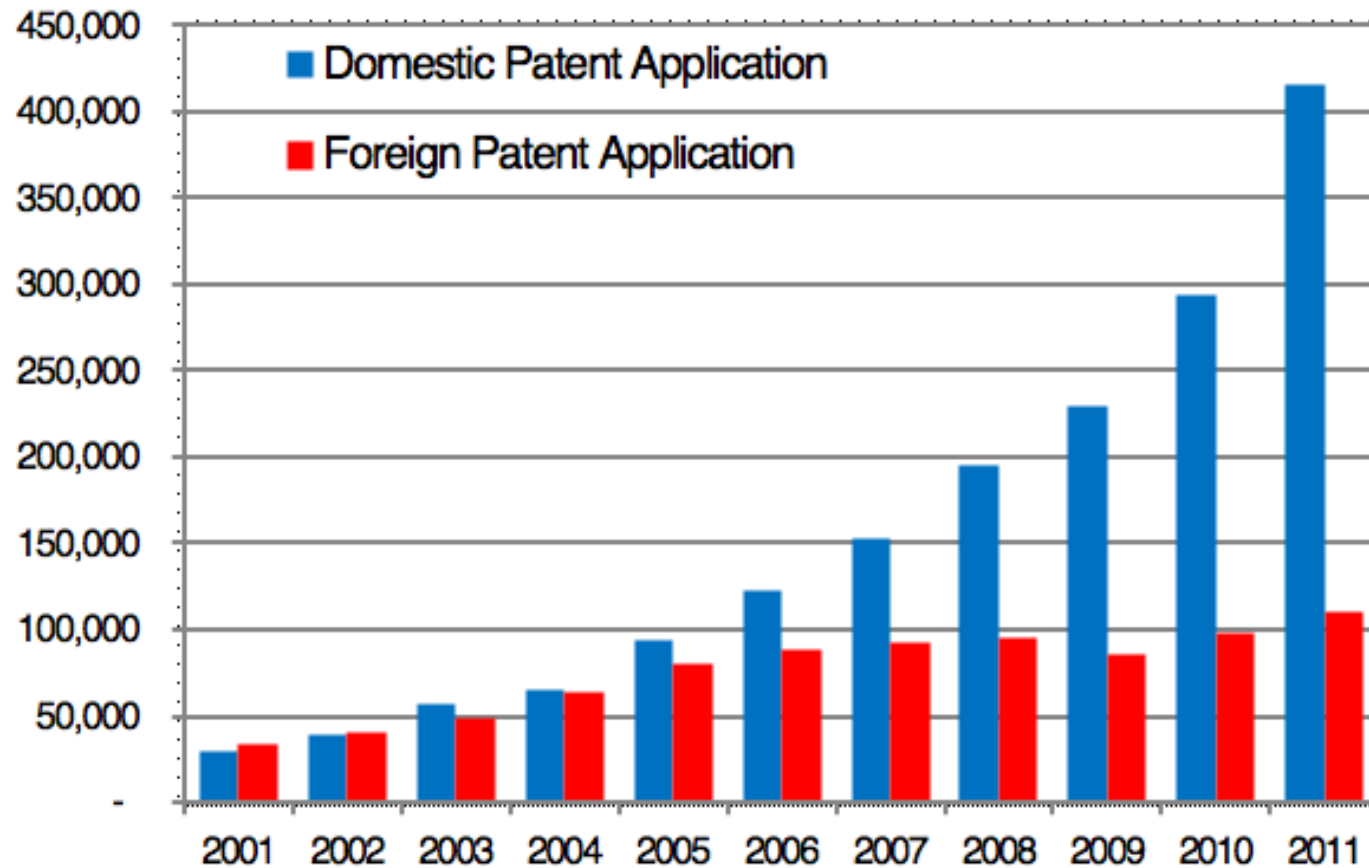
## Patent grants in 2016



## Domestic vs. Foreign (Total), 2001 - 2011

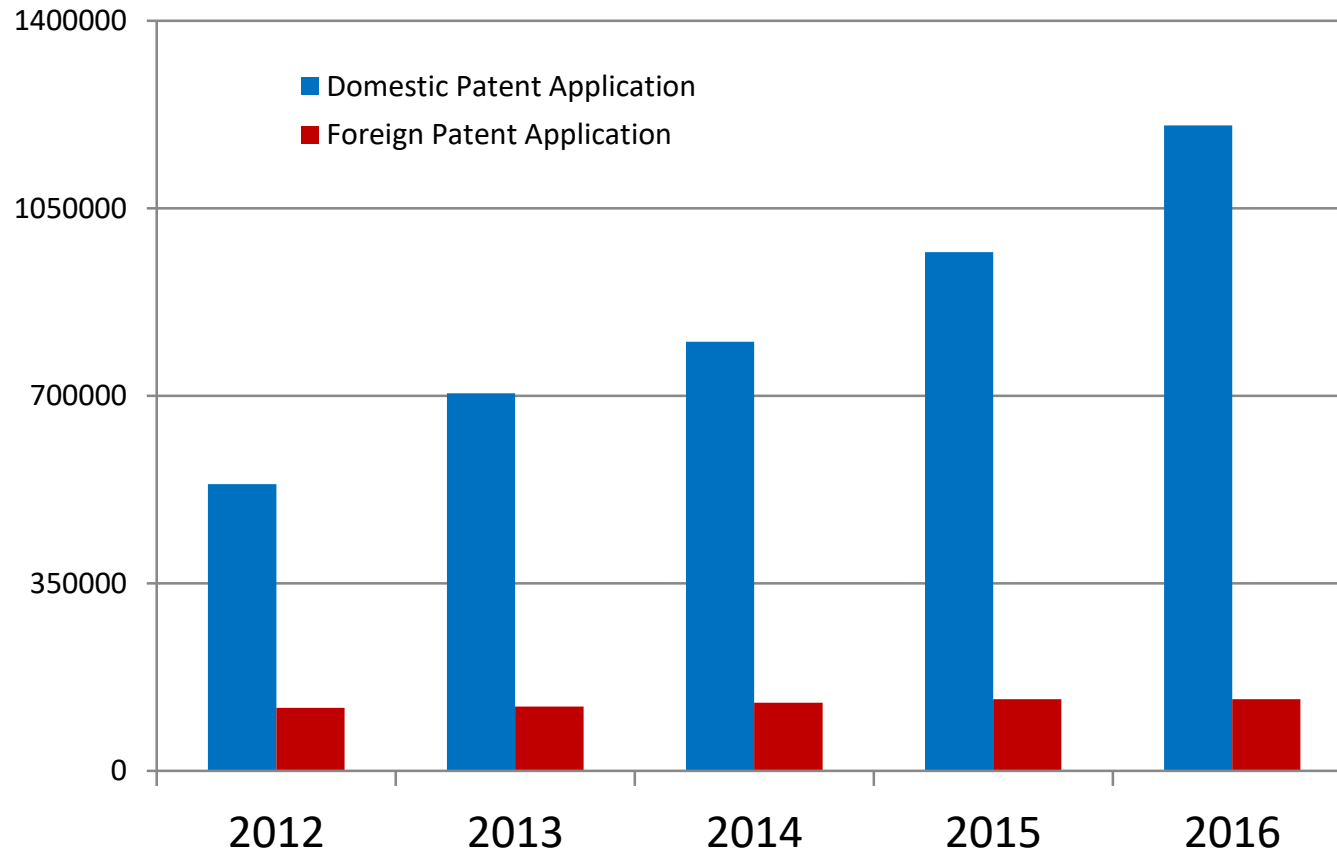


# Domestic vs. Foreign (Invention), 2001 - 2011



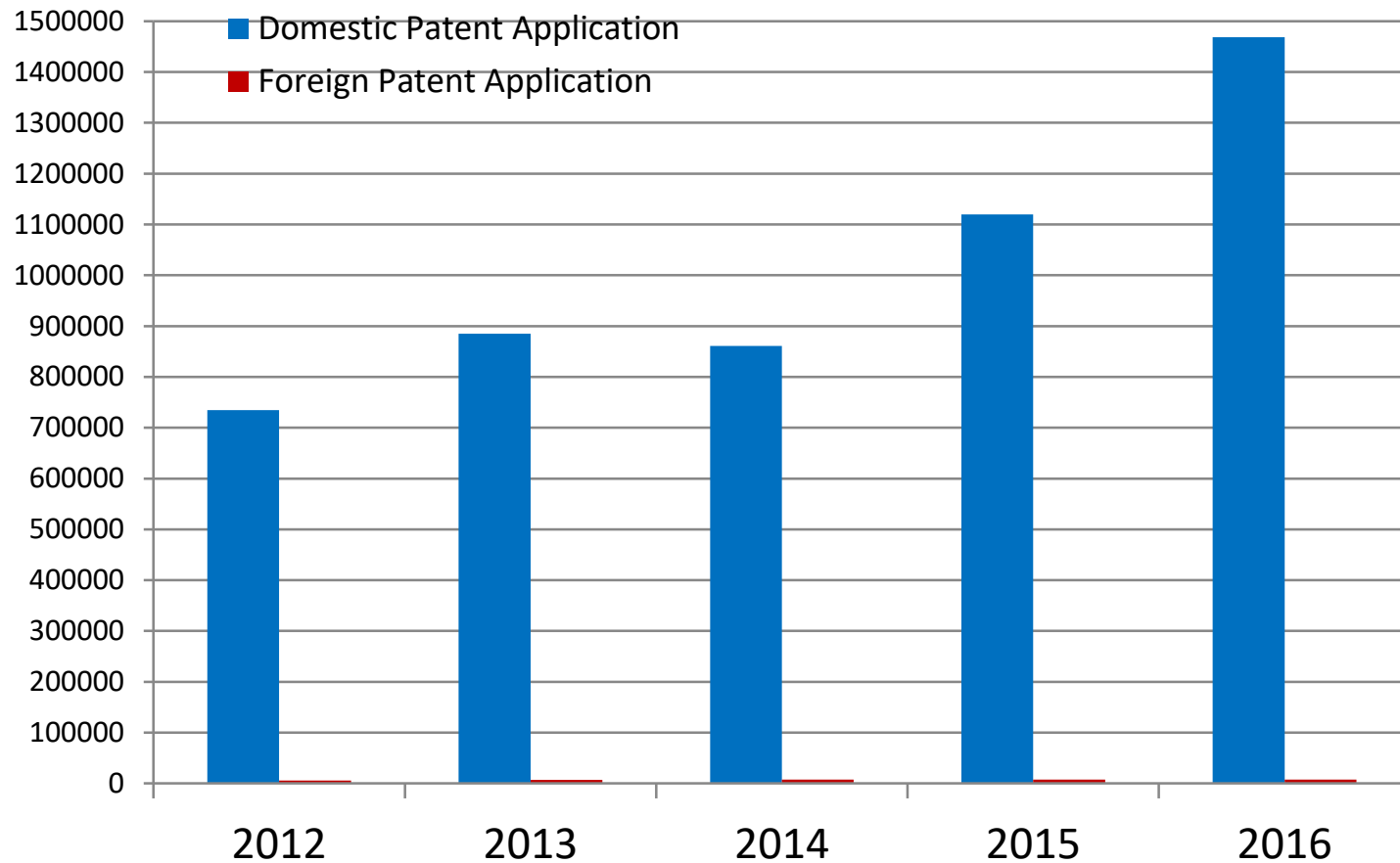


# Domestic vs. Foreign (Invention), 2012 - 2016

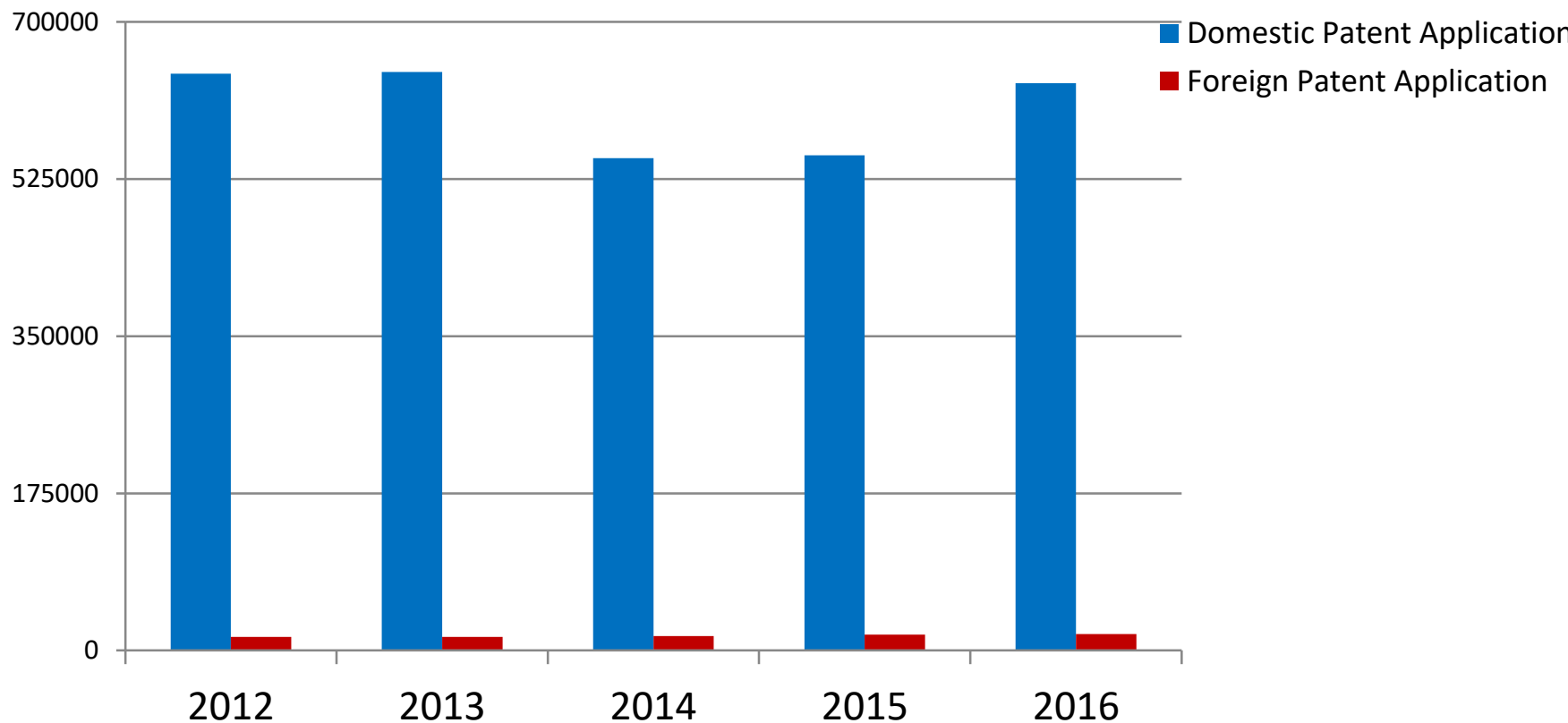


# Bad News

# Domestic vs. Foreign (Utility Model), 2012 - 2016



# Domestic vs. Foreign (Design), 2012 - 2016



# Vast Subsidies for Patent Filings

- Difference between US and China patent systems in a single story
  - Calls to local authorities from Ministries about meeting patent quotas
- Favorite Subsidy:
  - Reduced prison sentences if inmate files a patent
    - “Keep a few applications on file in case you get some jail time”

## More subsidies

... where the money was

- Generous reimbursement of patent filing costs
- Lower Corporate Income Tax for High & New Technology Enterprises: 15% vs. 25%

An Enterprise “that **owns core intellectual property rights** ...”

- acquired intellectual property critical to its products or services through independent research, transfer, donation, or acquisition within the last three (3) years, or
- being the sole licensee of such intellectual property for at least the last five (5) years.

Good news

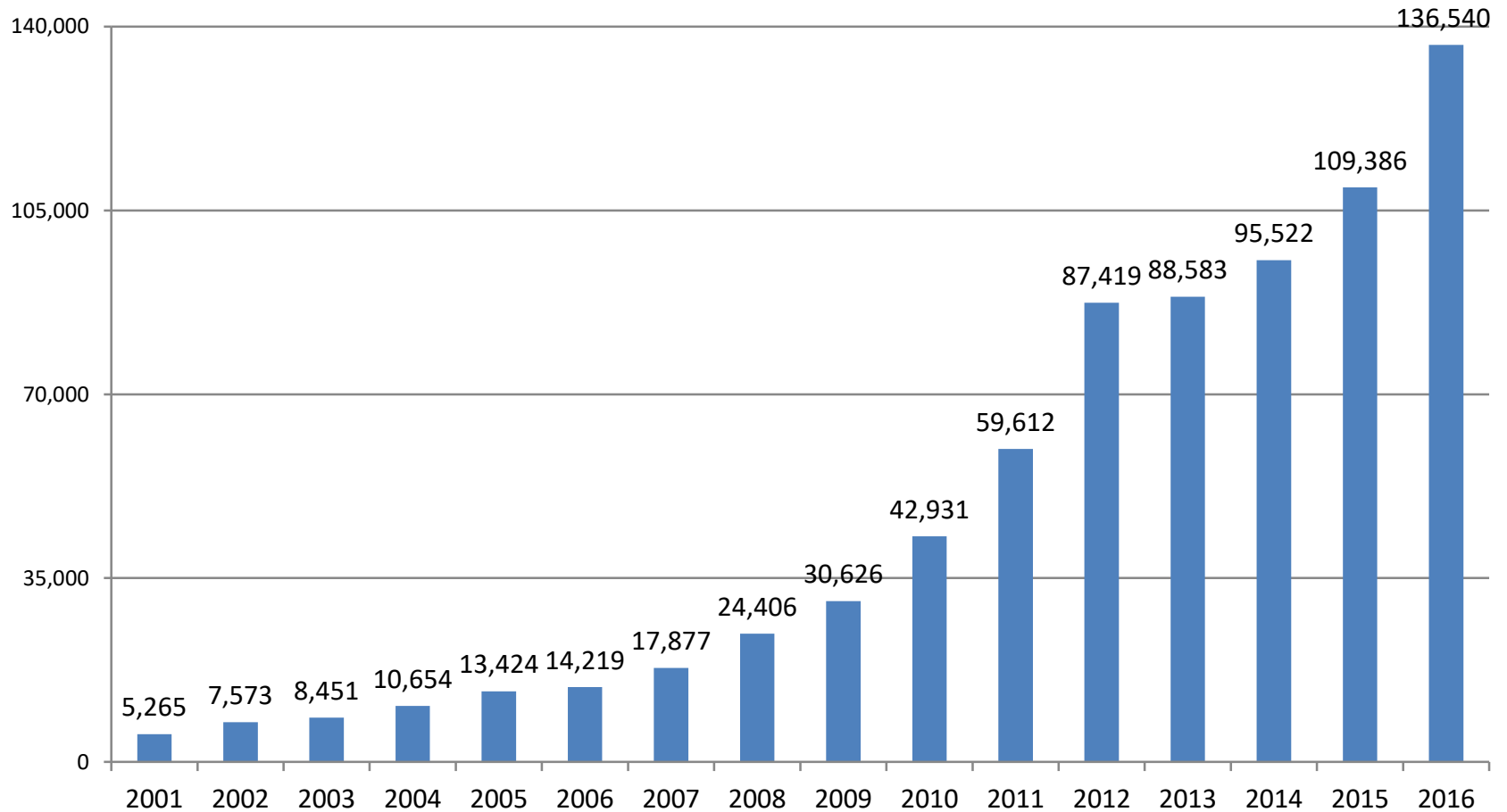
# Amendments to the Patent Examination Guidelines (effective as of April 1, 2017)

- Easier to obtain software and business method patents
  - Claims related to business methods that contain both business rules and methods **and technical features**, shall not be excluded from the possibilities of obtaining patent rights by Article 25 of the Patent Law
- Inventions relating to computer program
  - Only the computer program *per se* will not be protectable. A claim composed in a style as “mediums plus computer program” is allowable
  - A claim directed to an apparatus may include a program as a component part
  - The expression “function module” is replaced by “program module”
- COMPARE THIS TO THE USA:
  - Alice undercuts eligibility
  - Less enforceable



# IP Lawsuits in China

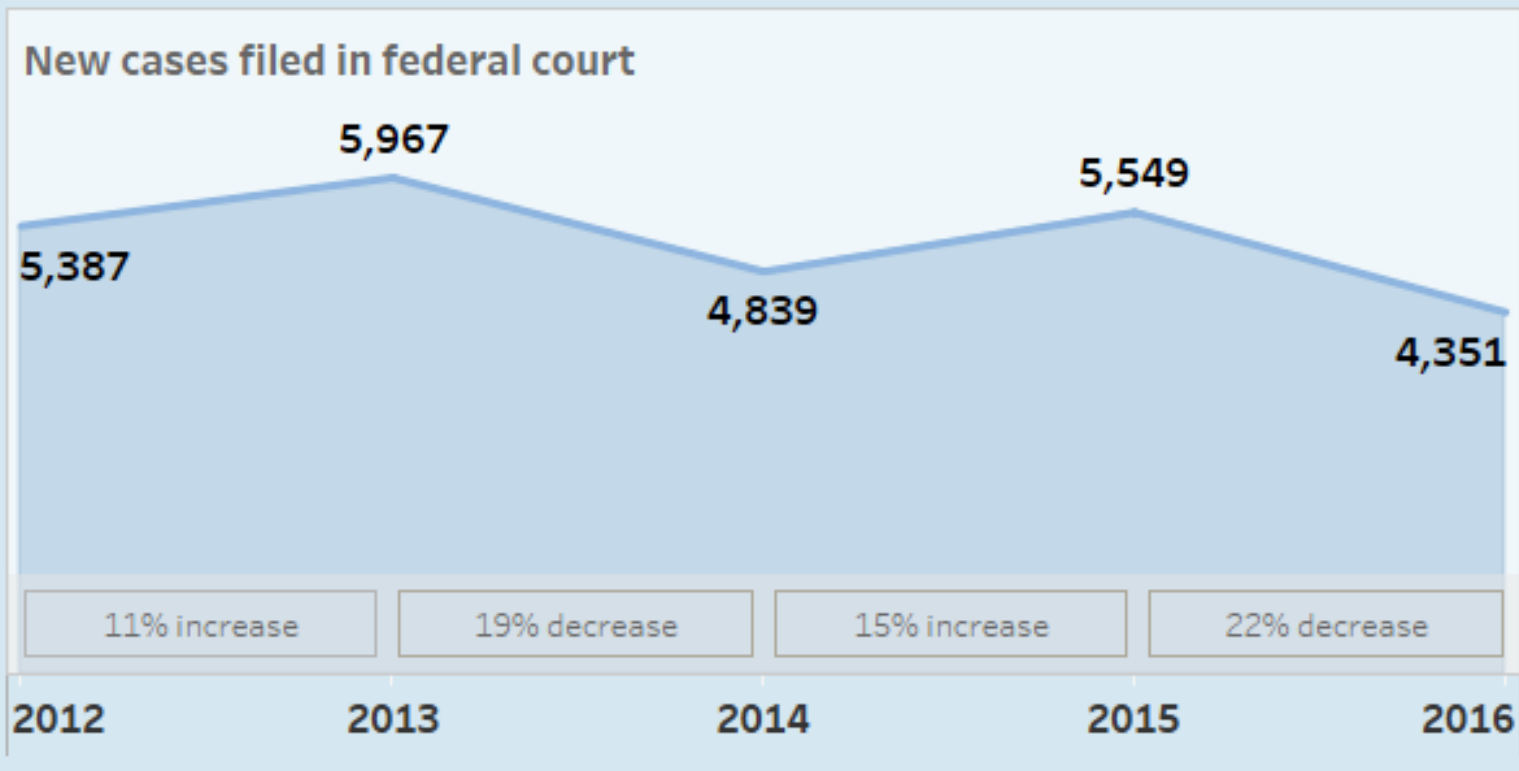
... where the money is



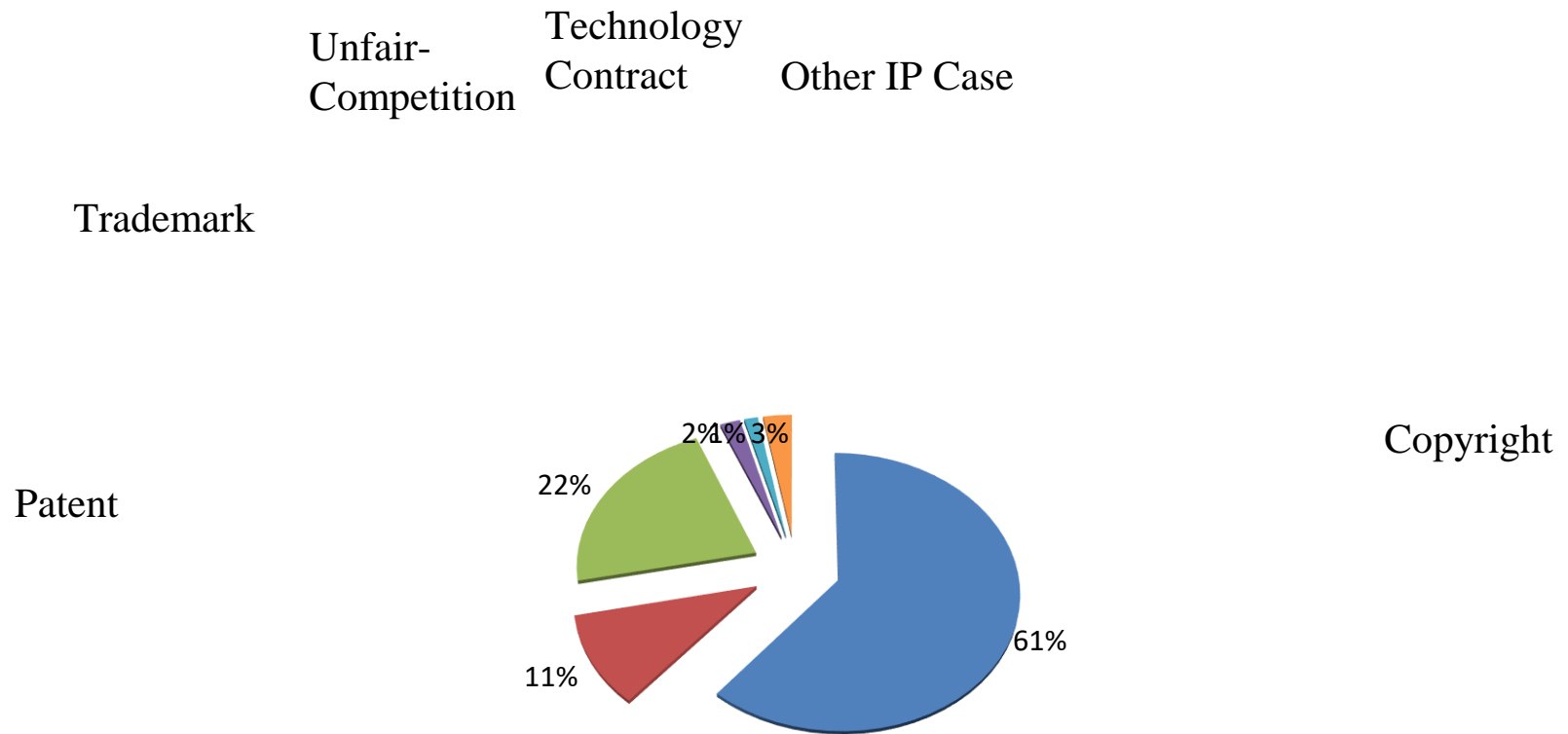
# Patent Lawsuits in the US

## Patent Cases Sink In 2016

Patent lawsuits surged 15 percent in 2015, but dropped back last year, with the number of new patent complaints filed falling nearly 22 percent.



# China IP Litigation – 2015



# Bad News

# Landslide of Unexamined Patents

- 82% of Chinese patents are unexamined UM & Design patents



## OLD BUSINESS REALITY

The only thing worse than someone copying your product in China  
is nobody copying your product in China!

## *NEW* BUSINESS REALITY

The only thing worse than being sued in Texas is being sued in China!

# Good News

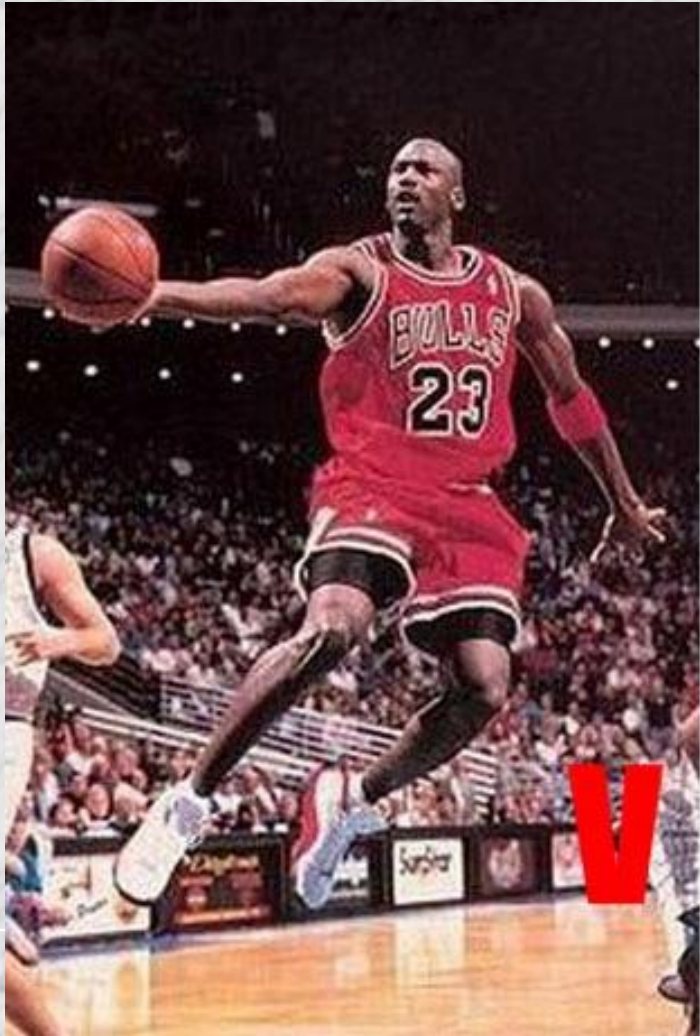


# The World's IP Super Dockets

## - Specialized IP Courts in China

- Specialized IP courts in Beijing, Shanghai, Guangzhou since 2014
  - Beijing IP Court in 2016: 10,638 cases filed; 8,111 concluded
  - Shanghai IP Court in 2016: 1877; 1877
  - Guangzhou IP Court in 2016: 4949; 3393
- New IP “tribunals” in Chengdu, Nanjing, Suzhou, Wuhan
- AND Fuzhou, Hangzhou, . . . (altogether 11 now)
  - Story of “desire to become ‘courts’”!

# Qiaodan — Chinese trademark



# Issues: prior use; unfair use



# Huawei v. Samsung

- July 2016
  - Huawei filed against Samsung in Quanzhou Intermediate People's Court
    - Asserted patent related to a smart phone's graphical displays, such as how certain icons should be arranged
    - Targeting 16 Samsung products (incl. Galaxy S7)
    - Asking for damages of RMB 80 million (\$ 11.6 million)
- April 2017 – Huawei won in Quanzhou court
  - The court ordered Samsung to pay Huawei RMB 80 million in damages
  - Less than 10 months from filing to judgment





# Huawei v. Samsung

- May 2016
  - Huawei filed lawsuits against Samsung in both Shenzhen Intermediate People's Court in China, and in the Northern District of California
    - 11 SEPs (all licensed to Apple), involving 4G and LTE technologies
- July 2016 - Samsung fought back
  - Samsung filed a patent infringement lawsuit against Huawei in the Beijing IP Court
    - 6 patents (4 SEPs, 2 Implementation patents)
    - Targeting Huawei's Mate 8, Honor and Tablet, etc
    - Asking for damages of RMB 161 million (\$ 23.3 million) and an injunction

Bad news

## Shenzhen Baili vs. Apple

- Early 2016, Baili sought administrative order from Beijing IP office against Apple for infringement of design patent



BUT, not so fast



# Shenzhen Baili vs. Apple

- Beijing IP office ruled:
  - iPhone6 and iPhone6Plus infringe on Baili's design patent due to substantial similarities to Baili's 100c Phone
  - Issued administrative injunction to halt sales of both iPhone 6 and 6 Plus in Beijing
- Apple appealed the administrative order to Beijing IP Court
- Beijing IP Court ruled:
  - SIPO BJ office did not follow due procedures in ordering the ban
  - No sufficient proof to claim the designs constituted a violation of IP rights

# Standards and Patents

China: the coming battle ground

# Standard Essential Patent

- Xi'an Xi Dian Jie Tong Radio Network Co. (IWNCOMM) v. Sony (Beijing IP Court)
  - Sony was ordered to
    - immediately cease infringement of IWNCOMM's SEP found in 35 of Sony's mobile handsets;
    - damages of RMB8.62 million (approximately \$1.25 million); and
    - litigation costs of RMB474,194 (around \$69,000)
  - SEP owners are not prohibited from seeking injunctions
    - “Bad faith of SONY during license negotiation”



NPEs

## NPE plaintiff

- Wireless Future Technologies Inc v. SONY (Nanjing Intermediate Court)
  - Parent company is Wi-LAN, a non-practicing entity
  - Chinese invention patent ZL200880022707.5, “Control panels in communication network systems”, original assignee was Nokia Siemens Networks OY
  - SONY smartphone Xperia Z5 Dual E6683 and the Xperia Z5 Premium Dual E6683
  - Seeking injunction, RMB 8 million (\$1.2 million) in damages and attorney fees

# New Courts: Observations

# Key Takeaways

- New IP courts are generally plaintiff-friendly
- NPEs are attracted to bring suits in China
- Injunctions regularly granted
- Damage awards in upward trend
- All Chinese courts are rocket dockets – defendants feel “ambushed”  
– expect trial in 6-14 months
- Chinese Customs enforcement will have global impact
- Do not facilitate infringer’s forum shopping. Imprudent warning letters may prompt DJ actions in infringers’ home courts
- Do not wait to be sued. Use invalidation to preempt competitor



**Is China the New Patent Superpower?  
(the GOOD)**

**or**

**Has China turned the Patent System on its head?  
(the BAD)**