

China: Patent LAW

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THE GOOD NEWS

China really believes in Patents

THE BAD NEWS:

China really believes in Patents

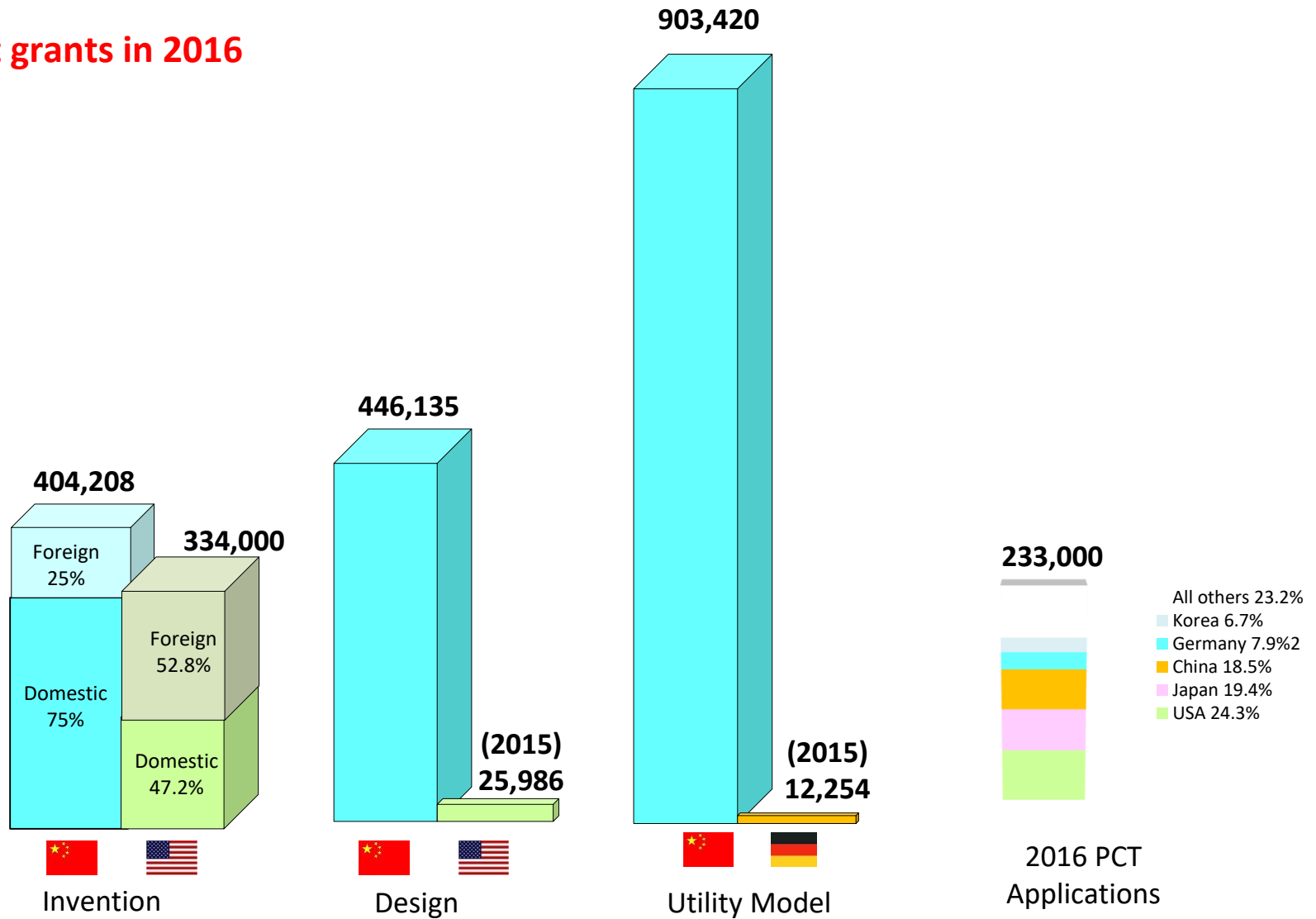
GOOD NEWS

Patent Comparison between the US and China

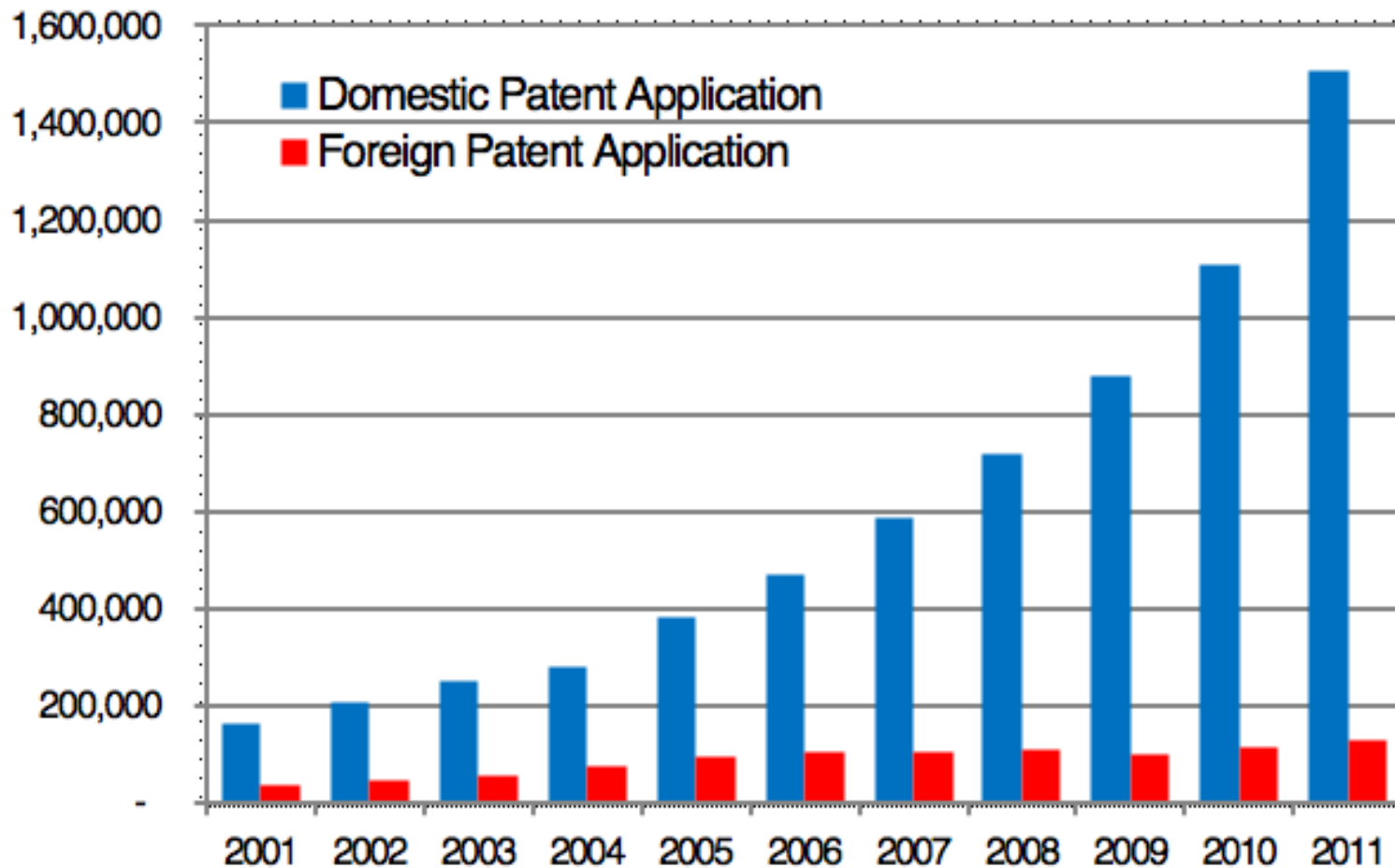
	U.S.	China
Patents Granted In 2016	334,000	>1,750,000
Substantive Examination	100%	<20%
Patent Infringement Lawsuits in 2016	4,351	12,357
Average Time To Trial	> 24 mos	9 mos
Permanent Injunction Frequency	about 75%, but uncertain always	>90%

Patent Assets In China

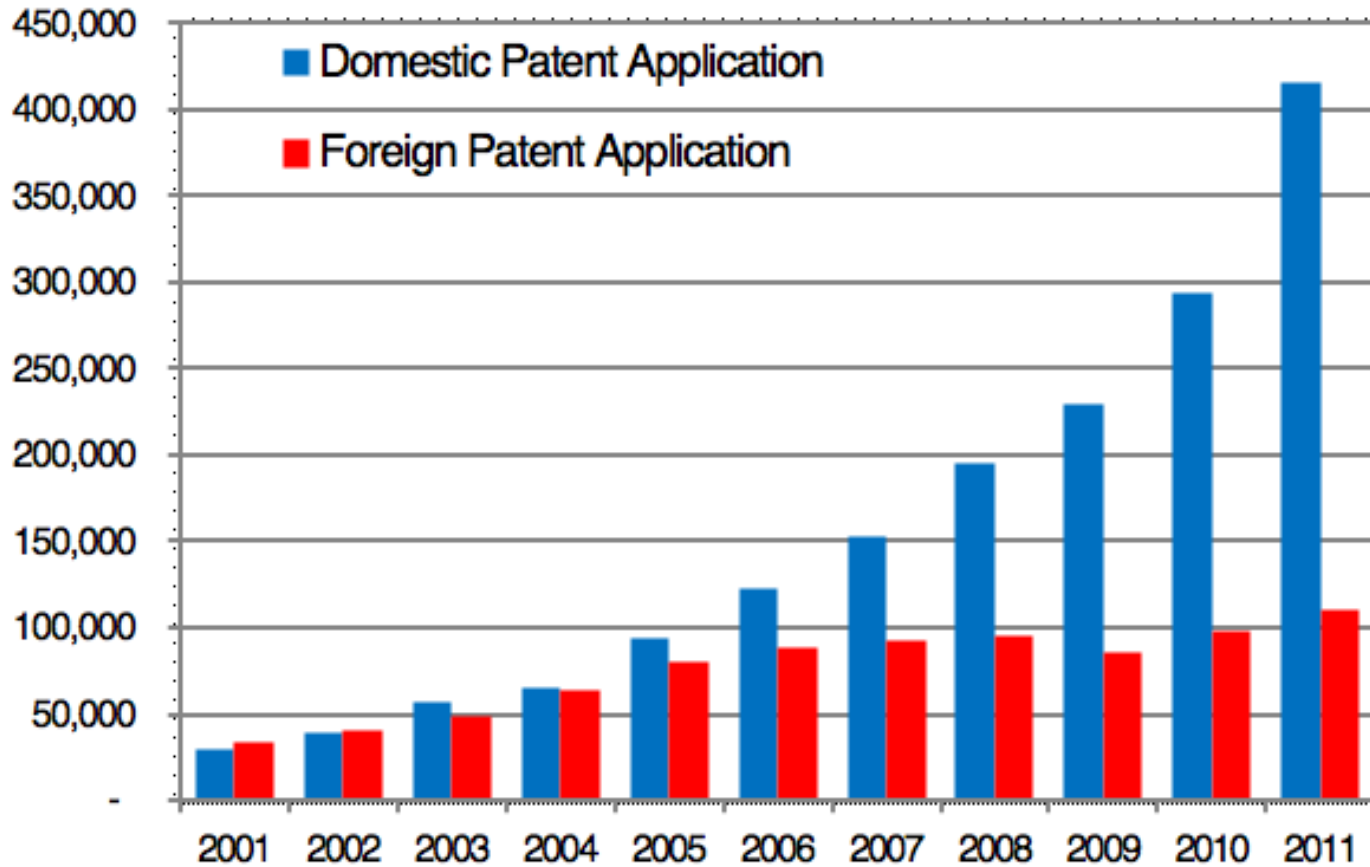
Patent grants in 2016



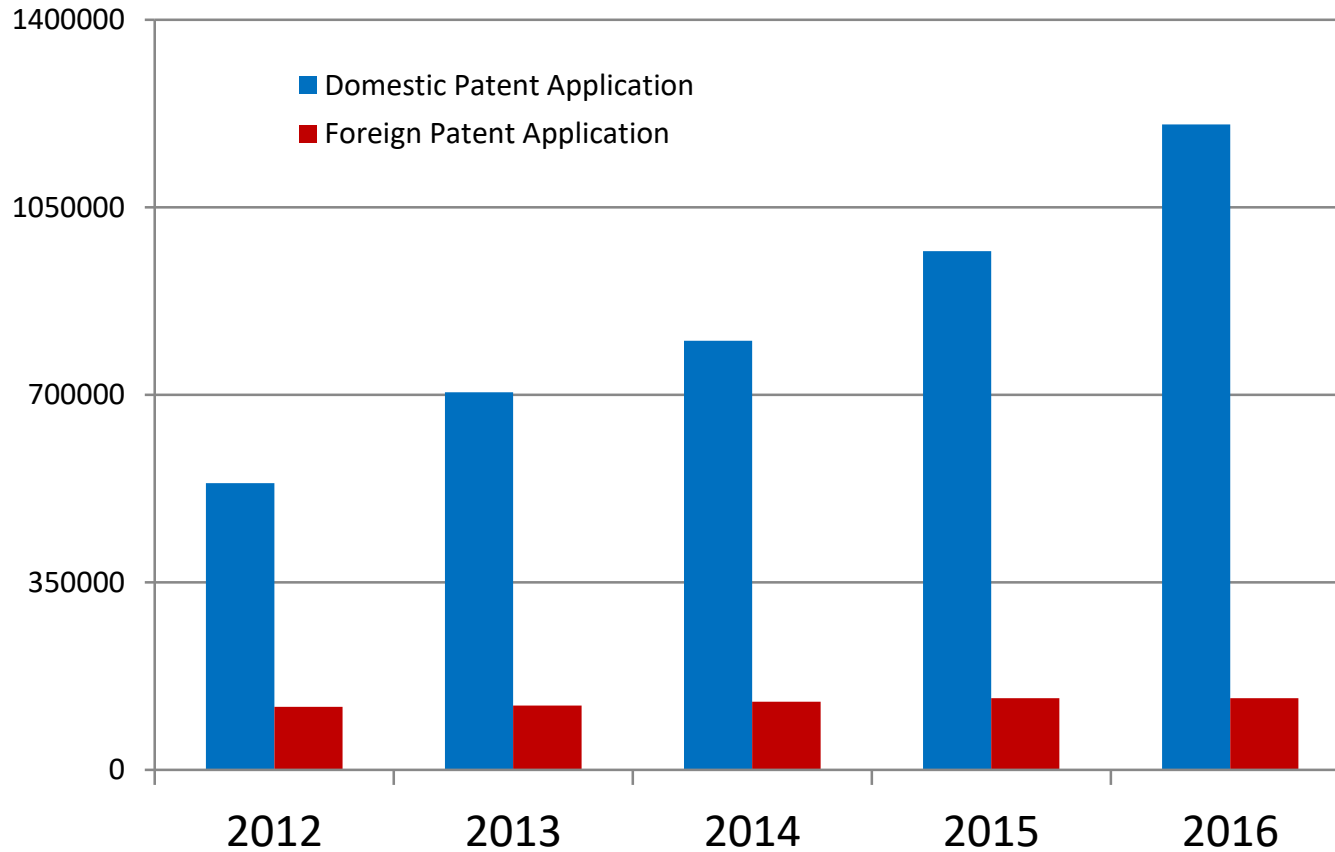
Domestic vs. Foreign (Total), 2001 - 2011



Domestic vs. Foreign (Invention), 2001 - 2011

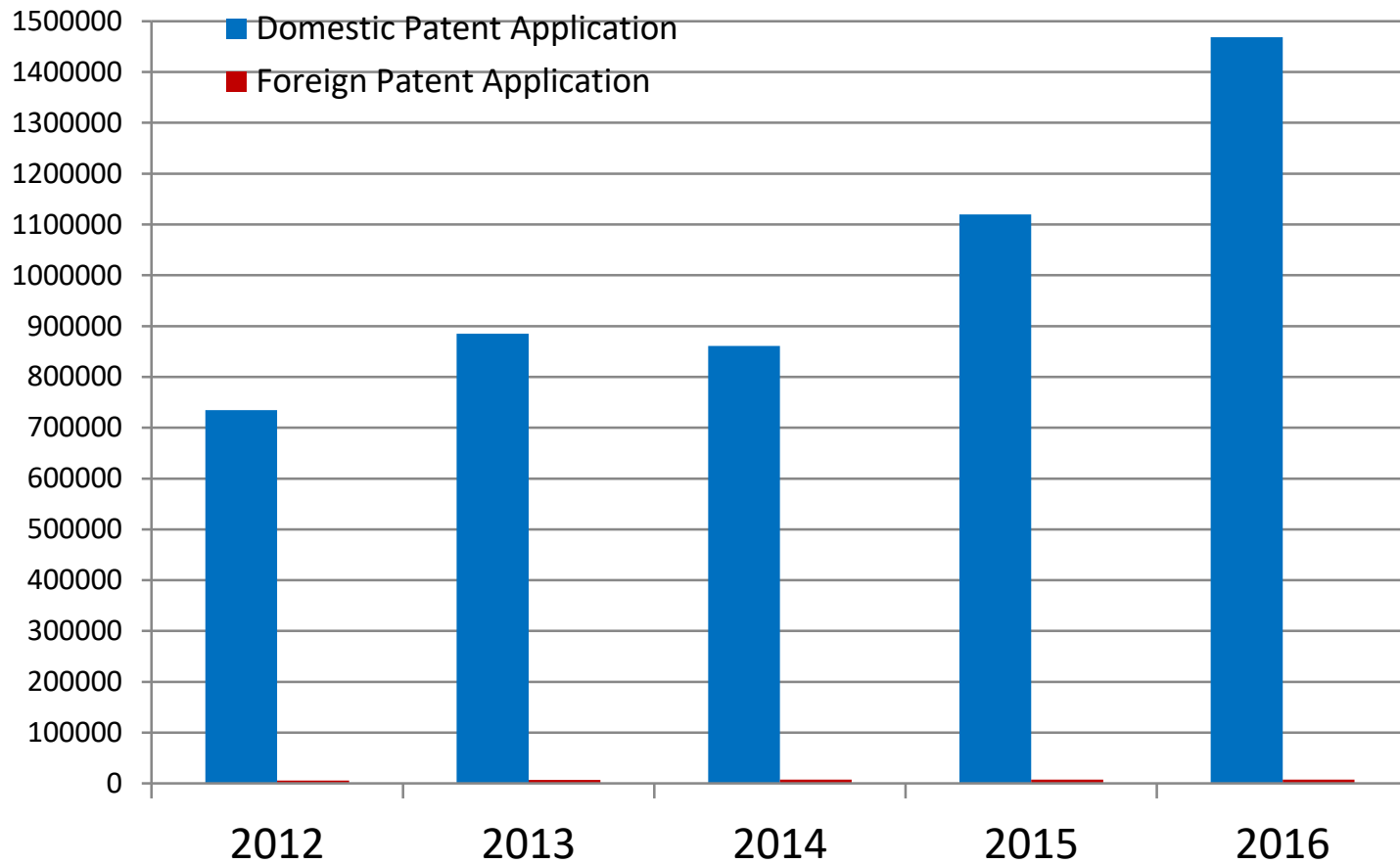


Domestic vs. Foreign (Invention), 2012 - 2016

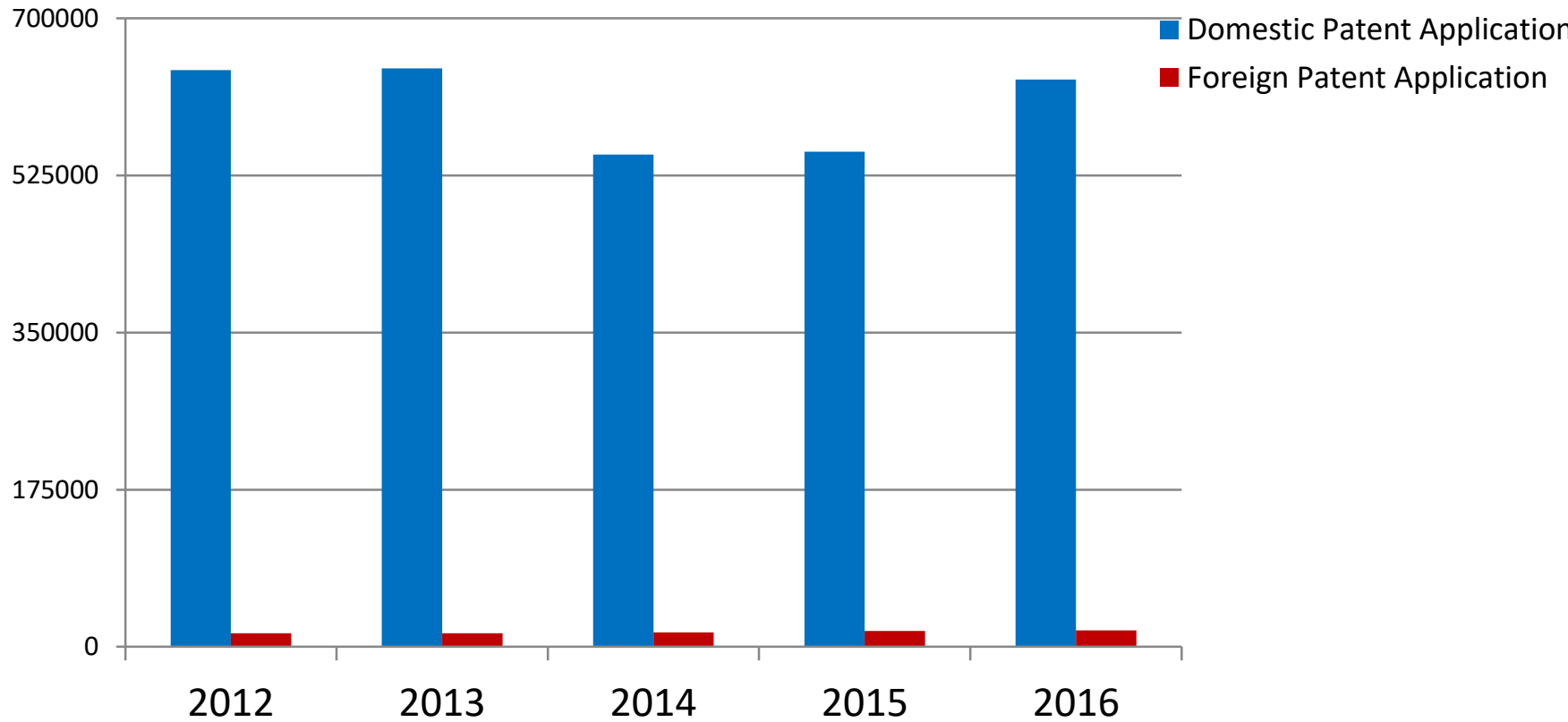


Bad News

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.

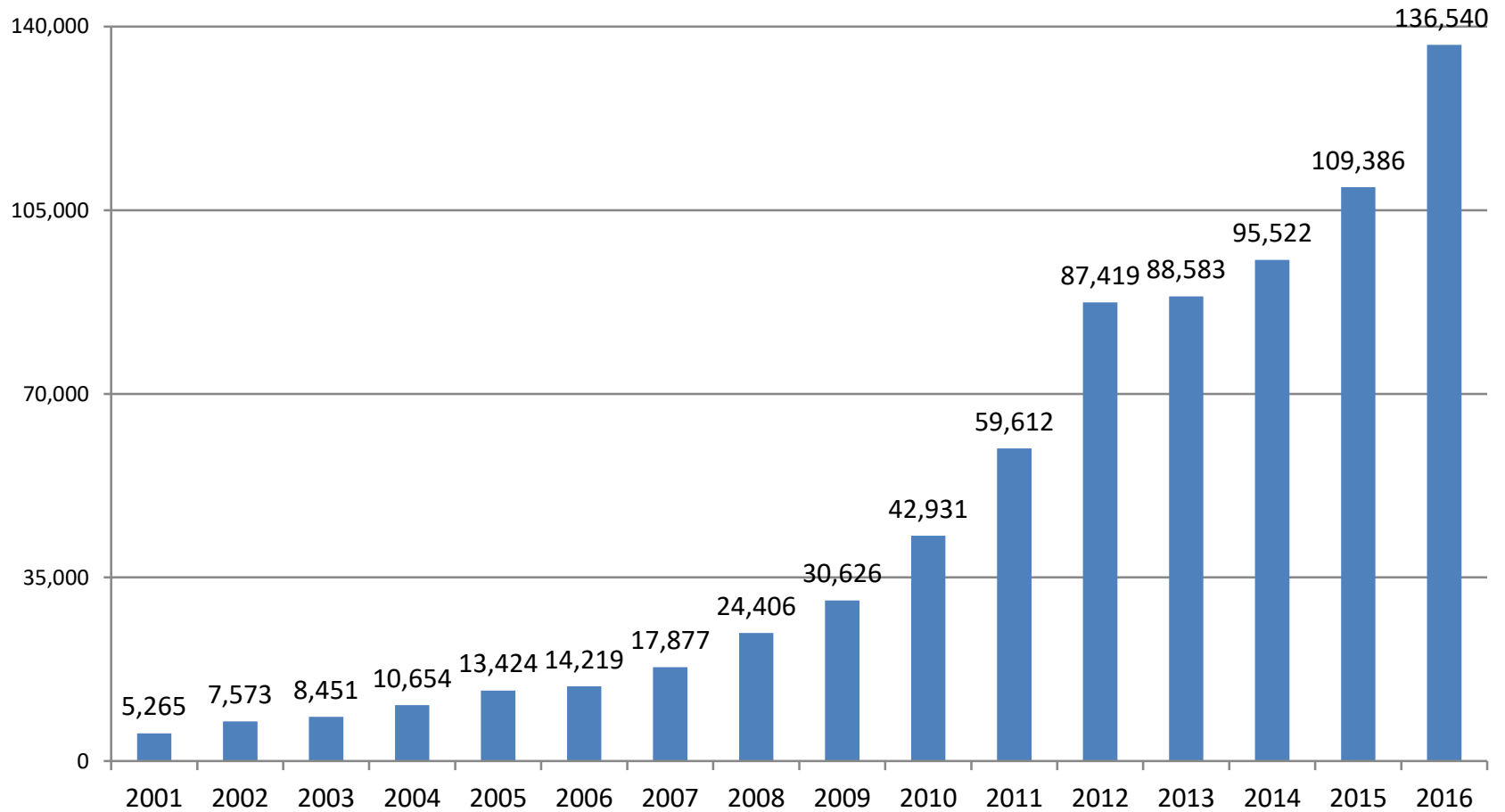
Good news

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

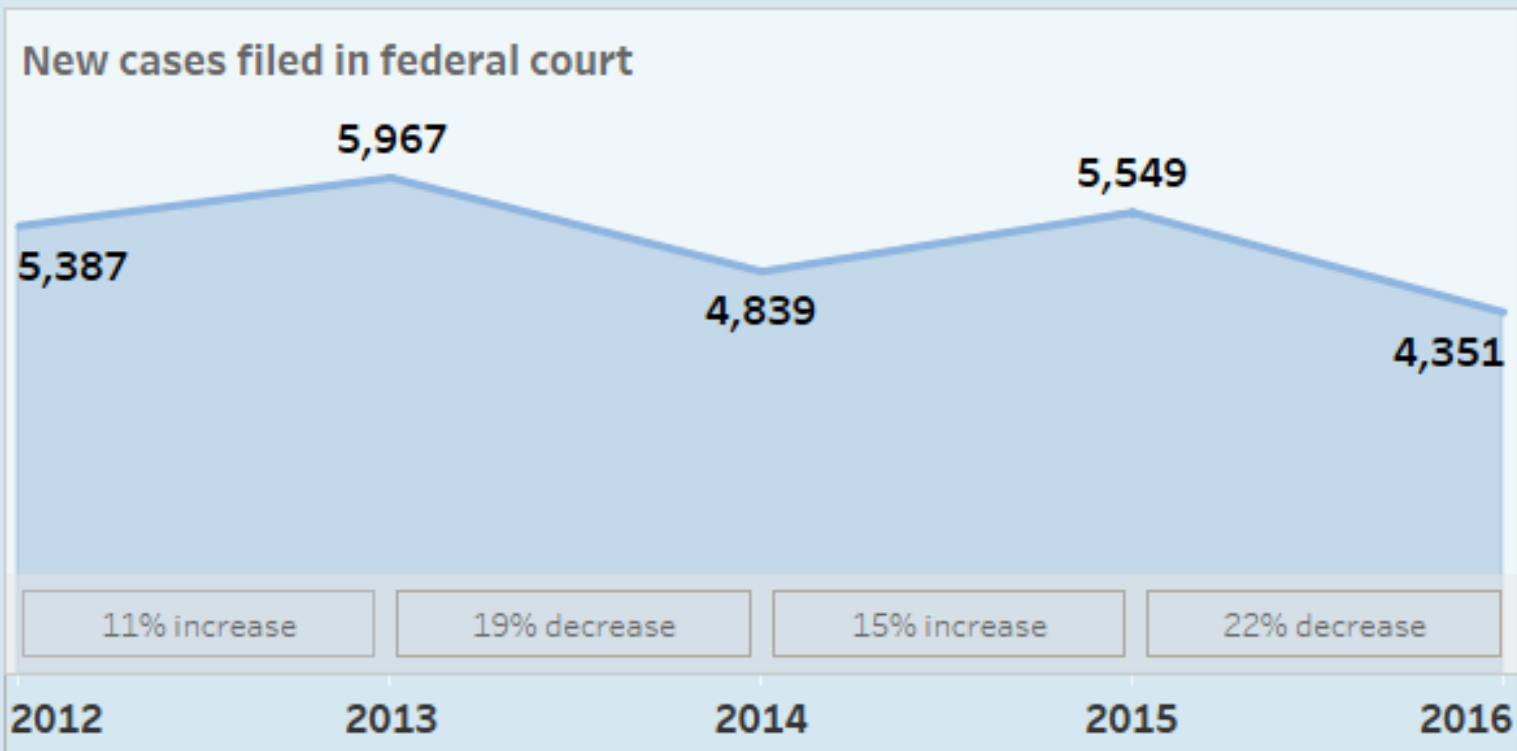
... where the money is



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.



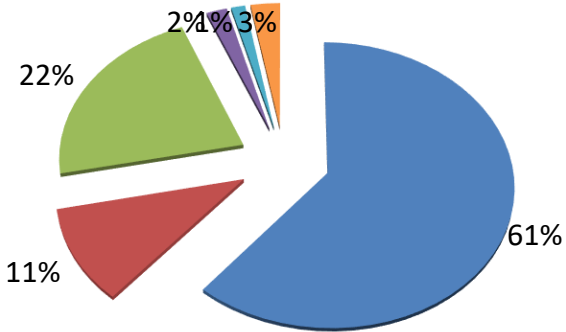
China IP Litigation – 2015

Unfair-
Competition Technology
Contract Other IP Case

Trademark

Copyright

Patent



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!

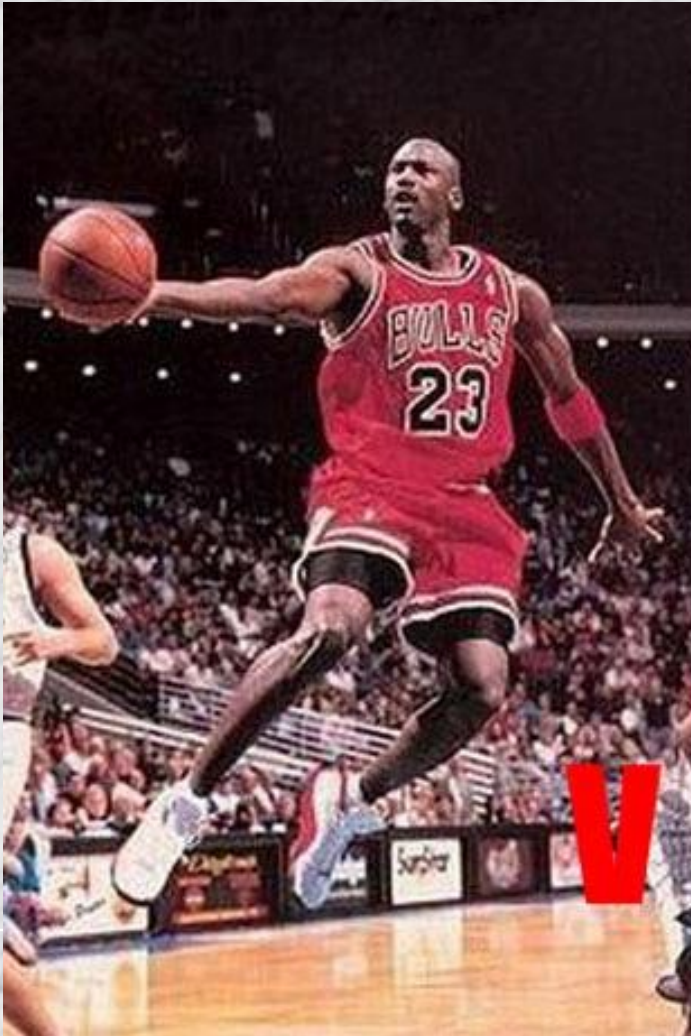
Good News

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



W

S



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)**