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Q. I want to get a recently-developed product made in China but I am worried about copies. How can I protect my company?

A. Firstly, the writer must identify whether the product, is capable of being protected by a patent and/or registered design. If so, he should file for protection at the UK Intellectual Property Office. He should then determine where his target markets are (*e.g.* USA, mainland Europe) and devise a cost-effective filing strategy – a qualified patent attorney will be able to help.

It's important to note that importing a product which falls within a patent or registered design is an act of infringement, and that the owner of, say, a UK patent can stop importation of an infringing article into the UK.

In China, it seems that, culturally, copying is not perceived as it is in Western Europe. In 2007, around 58% of counterfeit articles seized by EU customs originated from China.

The private ownership of intellectual property was only introduced in 1982, and the first patent law enacted in 1985. However, as a member of the World Trade Organisation (WTO) China is a signatory to the WTO's Trade Related Aspects of Intellectual Property (TRIPS) agreement which sets minimum standards for IP registration and enforcement. The latest Chinese Patent Law, which comes into force in October 2009 will provide wider enforcement power and heavier sanctions for patent infringement.

The latest statistics on patent filingsⁱ show that China is becoming an increasingly important patent filing destination for residents and non-residents alike.

In 2006, China became the third biggest patent filing destination, with over 50% of the filings made by Chinese residents. Between 2000 and 2006, the world wide share of total patent filings originating from China jumped from 1.9% to 7.3%!

As the value of IP is further appreciated by Chinese residents, and as the Chinese and export markets mature for Chinese businesses, it is likely that respect for others' IP will increase.

Recent high profile wins for Western companies in China (Starbucks, Levis) have increased confidence that Chinese copyists can be successfully pursued through the Chinese Courts.

Therefore, when the writer devises his IP strategy, he should consider filing for protection in China and/or Hong Kong (which can be used to prevent the transit of infringing goods).

On a practical level, the writer must pick a local Chinese partner that he has faith in and with whom he can forge a meaningful business relationship. It is the strength of his relationship with 'on the ground' contacts that will enable him to police his IP and pursue infringers at the earliest opportunity.

From an IP perspective, the writer's patent attorney should have a good relationship with the local patent attorney who should ideally have a good grasp of the English and Chinese languages.

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ⁱ See www.wipo.org