IPR PROTECTION:

BASIC CONCEPTS, GLOBAL STANDARDS, AND PROTECTION STRATEGIES

Elizabeth Chien-Hale

E-Mail Address: ech@institute-ip-asia.org

©2014

What Are Intellectual Property Rights?

- An inventor's exclusive rights to prevent others from using his/her inventions, designs or other creations.
- Traditional forms of rights include:
 - Patent
 - Copyright
 - Trademark
 - Trade secrets

What Are Intellectual Property Rights?

Despite the stability of the IP system, there are also newer forms of intellectual property protection under discussion:

- **Traditional Knowledge/Genetic Resources**
 - Traditional knowledge" refers to the content or substance of knowledge resulting from intellectual activity in a traditional context;
 - Genetic Resources" is defined as genetic material of actual or potential value in the Convention on Biological Diversity
- **Cultural Expressions**

IP is all around us...























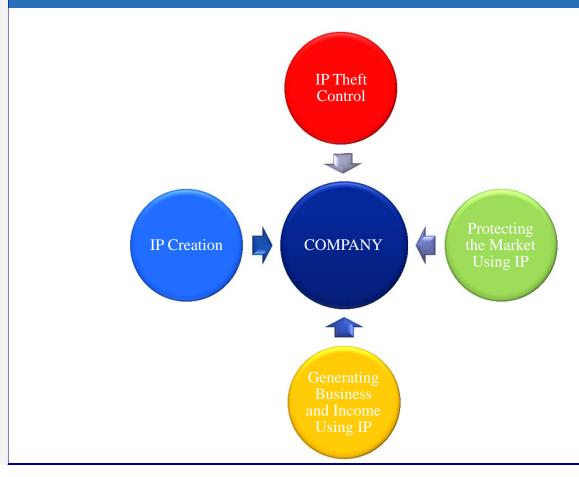
IP Can Be Commercially Valuable

- ❖ Apple sued Samsung in the US District Court, and the initial judgment is over USD 1 Billion.
- ❖ A consortium of companies buys patents of Nortel, a bankrupt company, for USD 4.5 Billion.
- ❖ 王老吉, the trademark is evaluated at RMB 1080.15亿, but is the value in the mark or in the 'red can'?

at IP Rights

Source: http://www.sipo.gov.cn/mtjj/2012/201208/t20120829 744544.html

How IP Adds Value to a Company: Visibility, Leverage and Profitability



The Territorial Nature of IP Protection

- **Chaos:** National/Regional IP legislations vary
- •Harmony:
- 1. international treaties: Paris Convention, Berne Convention, Patent Cooperation Treaty, TRIPS
- 2. setting standards of substantive rights and/or application procedures.
 - 3. new treaties and revisions are always in progress

Patent Protection

- State approved "monopoly" rights to exploit an invention, either process or product
- Generally includes the exclusive rights to make, use, and sell an invention
- Potential uses: exclude competitors and obtain licensing revenues
- Generally considered the strongest form of protection

Patent Protection

- Patentability Criteria for an Invention
 - Novelty, Utility & Non-Obviousness
- Innovation is publicly disclosed and is protected for 20 Years
- No International Patent: Need to file for protection in desired country/region

Patent Protection

However, companies need to weigh the potential advantages against:

- Loss of secrecy
- Costs (local and foreign)
- Industry trends
- Enforceability issues

Trademark Protection

Trademark is usually used to identify and protect the commercial goodwill built up by a business over the years:

- A distinctive sign to identify certain goods or services of specific person or enterprise;
- Can be words, names, symbol, graphical designs, or even sounds/color schemes/smells: characteristics which can serve as source identifiers;
- Is territorial, but can be renewed indefinitely

Trademark Protection

Registering your trademarks:

- Trademarks are arguably the most important assets of a business
- Can be established by use of registration, depending on the country
- For ease of registration, trademarks consisting or coined or arbitrary words (kleenex, yahoo, for example) are more registrable
- If you are doing business internationally, do not forget to register the marks in the local language

Copyright Protection

- For the more artistic forms of innovation: music, books, movies
- Complicated set of rights: distribution, uploading, downloading, etc.
- Usually offers a long protection period
- Usually does not require an "application" process (i.e. rights arise naturally once put into a tangible form)
- Lower level of "novelty" requirements

Building an IP Portfolio

- For defensive purposes at least
- First you need to register and apply for rights:
 - Remember IP rights are territorial
 - Granted IP rights will not be identical in every country
- Take advantage of patent and trademark licensing and buying opportunities

Monetize Your IP Portfolio

- The traditional approach is for an operating company use its IP to establish business positions, obtain financing, and create entry barriers.
- IP is increasingly dealt with at a purely financial level:
 - Utilize various types of business transaction intermediaries and service protectors to sell or license your IP rights,
 - Seek protection from or sell to institutional aggregators/investors,
 - There are also publicly traded companies which are purely based on IP rights.

The End

The Institute for Intellectual Property in Asia