China: the inside track

Six Chinese legal experts offer their insights on recent and ongoing developments affecting IP owners in the country

By **Jack Ellis**

In this special roundtable, a team of legal experts — Scott Zhang and Grace Li of DeHeng Intellectual Property Law, LLC; Michelle Ma and Bei Liu of Liu, Shen & Associates; and James Cleeve and Xuefang Huang of Marks & Clerk — outline the most significant IP developments in China over the last 18 months and offer their predictions on how the Chinese IP landscape will evolve in the months and years to come.

What do you consider to be the most significant IP developments to have taken place in China in the past 12 to 18 months?

Bei Liu: Over the past 18 months, the Chinese government has been encouraging IP creation and the proportion of invention patents granted has gradually increased: 217,105 invention patents were filed in 2012, 26.1% more than in 2011. In the same year, 19,926 Patent Cooperation Treaty (PCT) applications were filed with the State Intellectual Property Office (SIPO).

The government has also continued its efforts to improve IP protection in China, with revisions to laws and regulations including the judicial interpretation of the Antitrust Law and draft amendments to the Patent Law and the Trademark Law.

In 2012 the number of first-instance civil IP cases accepted and concluded by the local courts increased by 45.99% and 44.07% respectively, to 87,419 and 83,850 cases. Of these, 1,429 involved foreign parties — an 8.18% increase on the corresponding figure for 2011. Within each branch, there were 9,680 patent cases (23.8% more than in 2011), 19,815 trademark cases (52.53% more than in 2011) and 53,848 copyright cases (53.04% more than in 2011).

That said, court mediation is still the main way to dispose of first-instance civil IP cases. In 2012 70.26% of all such cases were concluded through court mediation. This was also the outcome of the famous *IPAD* trademark suit between Wei Guan and Apple.

For trademark registration and opposition proceedings, the State Administration of Industry and Commerce (SAIC) has promised that examination of a trademark application will normally be completed within 10 months and opposition proceedings will be concluded within 18 months.

With regard to copyright infringement cases, an increasing number of cases involving the right of communication in information networks have arisen due to the increased diversity of internet services and the expansion of network capacity.

James Cleeve: In terms of legislative changes, four IP-related regulations were revised early this year: the Regulation on the Implementation of the Copyright Law, the Regulation on the Protection of the Right to Network Dissemination of Information, the Regulation on the Protection of Computer Software and the Regulation on Protection of New Varieties of Plants. These increased the fines imposed on illegal business proceeds to a unified level of one to five times the unlawful gains, and raised the maximum threshold penalty for offenders to RMB200,000 or RMB250,000.

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As Bei points out, China is also amending its Patent Law, Trademark Law (the amendments to which were promulgated on 30th August 2013 and are due to come into effect on 1st May 2014) and Copyright Law. This is principally intended to speed up the registration process, strengthen the powers of government agencies to handle IP infringement cases, and increase the penalties for infringers and the amount of compensation and damages awarded to successful claimants. To achieve these goals, a time limit on the examination of IP right applications will be imposed, authorities will be granted the right to seek evidence of alleged infringements and the burden of proof will be shifted from the claimant to the alleged infringer in some circumstances. Also, punitive damages penalising wilful infringements will be introduced and the maximum statutory compensation will be increased.

Grace Li: The revised Trademark Law that James and Bei mention will come into effect on 1st May 2014. It is the product of a protracted process of debate and compromise involving government stakeholders, industry, academia and the legal profession, which has been ongoing since 2009. The most significant changes in the revised version include the following:

- Examination periods are clearly stipulated. The process has been accelerated to nine months for trademark applications, 12 months for opposition proceedings and 12 months for Trademark Review and Adjudication Board (TRAB) proceedings against opposition decisions.
- The courts can award damages of three times the profits lost by the rights holder or the illegal profits made by the infringer. Under the current Trademark Law, only the exact sum of lost profits or illegal profits may be awarded in damages. Statutory damages have also been increased sixfold from RMB500,000 to RMB3 million.
- For the purpose of determining the amount of damages, the court may order the infringer to submit any accounts, records and other information that document the extent of the infringement. If the infringer refuses to do so, or submits false information, the court may determine the amount of damage with reference to the rights holder's claim and proof.

The Chinese government recently released the 2013 IP Promotion Plan. What do you consider the key points to be?

JC: The 2013 IP Promotion Plan, which comprises 84 detailed measures, aims to achieve major IP-related objectives, including IP creation, protection, utilisation, management and awareness promotion.

More than half of the measures are intended to encourage innovation, which has long been a concern. For example, Chinese car manufacturers filed 15,685 patent applications between 1985 and 2005, of which only 7.27% were invention patents; while foreign competitors filed slightly more applications, of which about 81% were invention patents. These figures demonstrate that the Chinese auto industry is less innovative than its foreign counterparts.

Another highlight of the plan is a greater focus on promoting cooperation between government agencies by integrating civil, administrative and criminal cases into one IP court and improving the consistency of judicial adjudications in IP infringement cases, as reflected in the amendments to the IP laws.

The plan also calls for increased efforts in IP risk assessment and integrity of policies for promoting industrial developments and protection of IP rights in important industries. These include pollution prevention and treatment, resource recycling, low-carbon technology, ultra-high-speed fibre optics and radio communication, semiconductors and new display technology, biological resource utilisation for healthcare, agricultural development and environmental protection, aeronautical equipment, satellite, track traffic equipment, marine engineering equipment, generation and utilisation of new power resources, new materials and new energy vehicles.

BL: The 2013 IP Promotion Plan was issued by SIPO in March 2013. The first goal of the plan is to improve IP quality in order to promote innovation, as James mentions. It emphasises that the government should direct companies to shift their focus from quantity to quality of IP rights. Further, the government will conduct an appraisal and evaluation of the indicator of invention patent ownership per 10,000 of the population.

Second, the plan also provides that IP protection will be considered as a performance appraisal criterion for local governments. In addition, some IP judicial

interpretations of the Supreme Court will be amended, such as Several Provisions of the Supreme People's Court on Issues Concerning Applicable Laws to the Trial of Patent Controversies (2001).

Third, more intermediate courts and some basic-level courts will have jurisdiction to hear patent disputes. The Haidian Court of Beijing, the Yiwu Court of Zhejiang and the Kunshan Court of Jiangsu already have jurisdiction to hear patent disputes involving utility model and design patents.

Scott Zhang: Following on from what James and Bei have said, all in all the 2013 IP Promotion Plan includes eight tasks covering 84 implementing actions, and improving the level of innovation is the very first of these eight tasks. China has the largest number of patent filings annually since 2011. A consequent issue is thus to improve the quality of patent filings.

According to the 2013 IP Promotion Plan, the level of innovation should be improved through:

- Improved examination guidelines and an examination quality guarantee at SIPO.
- Improved quality of patent searches at SIPO.
- A government policy for improved quality of patents.
- Improved management of patent filings by SIPO.

With regard to the first point above, this year SIPO introduced stricter quality control systems to guarantee the quality of examinations. While previously utility model patents were subject only to formal examination, they are now also subject to examination for novelty and low levels of inventiveness. With regard to the third point, the State Council has published its Opinion on Strengthening Innovation Position and Improving Innovation Level of Entities in 2013. According to the opinion, the aim is to double the number of patent filings and granted patents by 2015. Enterprises are also encouraged to file patent applications overseas and to facilitate greater international cooperation on innovation through patent cross-licensing.

SIPO now receives more applications than any other patent office in the world and granted 217,000 invention patents in 2012 – a 26% per cent increase on the previous year. Given this, how confident are you of the quality of the patents being issued?

Michelle Ma: It is true that SIPO granted a lot more invention patents last year, because of a significant increase in the number of applications and the encouragement of the government. Although patent quality still needs to be improved, we feel confident in the quality of these issued patents for three reasons.

First, about 70% of applications were filed by qualified patent agencies and drafted or supervised by experienced professionals.

Second, SIPO is continuing to hire more contracted patent examiners to take on the extra examination work. In particular, SIPO is expanding its Patent Examination Cooperation Centre from one Beijing office to five others located in different cities around the country, and is conducting extensive training programmes for thousands of newly hired examiners.

Third, the public opinion mechanism during patent examination proceedings, patent invalidation proceedings and judicial inspection thereafter may provide a guarantee of different points of view, and at a different stage of the proceedings – from pre-grant to post-grant.

SZ: SIPO has made improved examination quality for each kind of patent – invention, utility model and design – its core target in 2013. In the first half of the year, SIPO's different patent examination departments evaluated their examination processes to arrive at a consistent standard for examining novelty, inventiveness and industrial applicability for each kind of patent.

The different examination departments have also taken a series of steps to improve examination quality and to strictly implement these consistent standards in their examinations.

JC: I agree with what Michelle and Scott have said. While SIPO has become the busiest patent office in the world in terms of the volume of patent applications received, it is also striving to lead in other respects, such as quality and speed of examinations. As compared to many other PCT designations, for example, Chinese examiners tend to carry out very thorough substantive examinations, at least on invention patent applications, and particularly on grounds such as added subject matter and lack of support (ie, when the patent specification lacks specific examples or embodiments to support a claim).

In fact, in our opinion, if an invention patent is granted in China, then those granted claims will probably be valid in most other countries. My own experience is that this high standard of examination for invention patents in China has not slipped over the past few years, despite

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the steep increase in the volume of patent applications received by SIPO. It is even possible that, to maintain the quality of invention patents, SIPO is deliberately maintaining its rejection rate at a certain level, as currently the level has not changed.

There has been increasing coverage of Chinese entities exploiting the country's utility and design patent regime in order to extract licences from foreign companies which they accuse of infringing their rights. How much of an issue is this and what can companies do to protect themselves from such attacks?

JC: This has become a particular issue since March 2009, when the Supreme Court encouraged local courts to dramatically increase compensation awards against patent infringers. This seems to have encouraged Chinese holders of utility model and/or design patents to file suit against foreign companies, seeking damages or seeking to extract licences from foreign enterprises that might be in formal collaboration with them or hold a dominant market position. To protect themselves, foreign companies should first ensure that all relevant parties — including Chinese joint ventures, licensees, suppliers and even contractors — have signed all appropriate agreements, such as confidentiality agreements, employee invention agreements and non-use/non-compete/non-circumvention agreements. They should also carefully stipulate the terms and conditions in these agreements to ensure full protection. Furthermore, foreign businesses should gain an in-depth understanding of China's utility model and design patent systems, in order to dismiss such attacks or instigate counterattacks where necessary. A key point to note is that Chinese utility model and design patents have low eligibility thresholds and do not go through substantive examination. This means that the owners of these rights may not have the right to challenge and their own rights could easily be invalidated.

SZ: Both Chinese entities and international companies are now filing increasing numbers of utility model and design patent applications. The difference between invention patents and utility model patents in terms of patentability is that invention patents require significant inventiveness, while utility model patents merely require inventiveness according to the Patent Law. There is no difference between invention patents and utility model patents in terms of the level of protection that they afford at the enforcement stage. That said, more and more international companies have adopted the strategy of filing invention patents for their standard patents or core innovations, and utility model patents for specific products or structures. Utility model patents provide quick protection. In addition, due to the increasingly strict requirements on examination quality at SIPO, utility models are now also examined for novelty and some level of inventiveness. Utility model and design patents are thus being favoured by many more companies.

MM: Under the utility model and design patent regime in China, a utility model or design application can be granted without search and substantive examination; in particular, the inventiveness requirement for a utility model is lower than that for an invention patent. Thus, it is easy for competitors to work around basic or fundamental inventions and file utility model applications with only minor improvements.

Normally, foreign companies selectively have some of their invention applications enter into China via the PCT or Paris Convention, which may not precisely match up with the actual products or commodities manufactured or sold in China. We would suggest that foreign clients take advantage of the utility model regime and obtain utility model patent protection to cover their actual products. Some foreign companies should also take advantage of the dual filing system, and apply simultaneously for both invention patents and utility model patents in China.

We would also suggest that foreign companies conduct a freedom to operate search before entering the Chinese market and be sure to cover utility models when they conduct this search. They are also recommended to periodically watch granted utility model patents which relate to their products.

As the largest e-commerce market in the world, China is increasingly focusing on enforcement methods for counterfeit products sold online. What are some of the developments in this area and do you think they have been effective?

Xuefang Huang: In December 2012 the Beijing Higher Court issued the Guidelines to Several Issues Related to Adjudicating E-commerce Cases Involving IP Infringement, which is the first judicial solution addressing e-commerce IP rights

cases. The guideline is effective only in Beijing, but may serve as a guide nationwide.

It divides e-merchants into self-running merchants (eg, amazon.cn, 360buy.com) and business platform providers that do not actually engage in transactions themselves (eg, taobao.com, alibaba.com). A self-running e-merchant must assume direct liability arising from its conduct and that of third parties when it fails to warn the public that it is not involved in a transaction. An e-commerce platform provider assumes liability only for failure to exercise its duty of due care. This means that the court does not view a platform provider as akin to a traditional shopping mall. Meanwhile, once a platform operator becomes aware of potential IP right infringements by sellers on its platform, it is required to take necessary measures, including demanding clarification from the sellers, removing the infringing information and so on.

We have found that e-commerce operators have become more cooperative in taking down infringing pages since the guideline's release.

BL: There are three types of e-commerce in China: business to business, such as Alibaba (www.1688.com); consumer to consumer, such as Taobao (www.taobao.com); and business to consumer, such as Jingdong. Nearly 3 million companies have set up businesses at Alibaba, while Taobao has 500 million individual registered clients.

As most of these private businesses and individual online shops are small sales entities, generally it is not worth suing them one by one to enforce IP rights, given the time and expense that this would involve. On the other hand, as most counterfeiters set up their e-shops on leading e-commerce platforms such as Alibaba and Taobao, rights holders can request those platforms to stop offering the counterfeit products or close the e-shops, by means of the complaints schemes for IP infringement that these platforms have introduced.

In addition, rights holders can obtain information on sales entities during the complaints process and may hire investigators to identify the manufacturers behind the counterfeit products.

GL: The popularity of e-commerce in China not only brings ever-increasing business for companies, but also frustrates many rights holders, given the extent of the counterfeiting problem. The number of litigations involving online infringements and counterfeiting has increased for the last five years. In addition to the Beijing Higher Court's guidelines that Xuefang mentions, several new laws and regulations have also been discussed and launched in the last six months which include provisions with relevance to online infringement:

- On 11th September 2013 the SAIC sought public comments on the Administrative Measures for Cyber Commodity Trading and Related Services. The administrative measures are an amended version of the existing provisional Measures for Cyber Commodity Trading and Related Services. The deadline for comments is 11th October 2013.
- On 10th July 2013 the SAIC published a Circular on Strictly Investigating and Punishing Violations of Using Internet to Sell Commodities or Services Explicitly Prohibited by the State.
- On 17th May 2013 the State Council published its Notification on Fighting IPR Infringement Actions and Selling and Making Counterfeiting Actions in Whole China.
- On 17th December 2012 the Supreme Court of China published Provisions on Several Issues concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Dissemination on Information Networks. The previous version from 2006 expired on that date.
- On 30th January 2013 the State Council published the revision to the Implementing Regulations of the Copyright Law.
- On 30th January 2013 the State Council published the Regulation on the Protection of the Right to Network Dissemination of Information.
- On 6th July the National Administration of Press and Publication published its Circular on Seeking Opinions of the Copyright Law (Second Draft Revision). The current effective Copyright Law is the version published in February 2010.

The launch of China-only brands, such as Hermes' Shang Xia and Honda's Li Nian automobile line, has been an interesting development in recent years. Do you think that this is a strategy that other global brands should follow and how has it been received in the marketplace?

GL: China-only trademarks are a new strategy for some international companies. It may not be appropriate for all global brands to follow. The strategy will have very different results in the marketplace for companies in different product or service

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sectors. It may be appropriate for products aimed at the middle or lower economic classes. Taking the automobile industry, for example, it would be fine for Honda to launch Li Nian in China only, since Chinese consumers would recognise the H logo on the car even if LI NIAN as a trademark could also be seen on the corner of the car. However, for Hermes's Shang Xia, I am not that optimistic. A luxury brand is better off staying purely international, purely high class and purely designed and made abroad, in order to retain its market cachet in China.

BL: A brand with Chinese characters only is usually more appealing to Chinese-speaking people and is easily remembered and used by Chinese consumers in comparison to a foreign-language brand. For instance, few Chinese people can correctly pronounce 'Schneider', but almost everybody knows its Chinese translation, 'Shi Nai De'. For this reason, Chinese sub-brands of global brands probably have remarkable market value in China.

In the *SUO AI* case, Sony Ericsson unsuccessfully opposed the Chinese brand SUO AI, which was registered by a domestic company and sounds like the abbreviated Chinese brand/name of Sony Ericsson – possibly because Sony Ericsson did not realise the potential use and market value of this kind of Chinese abbreviation earlier. Also, the so-called Chinese translation of Hermes, AI MA SHI, was registered by another company almost 20 years ago.

Some joint ventures want to have their own brands and adjust their trademark strategies to correspond to market needs. Li Nian from Guangzhou Honda is one such brand.

In addition, more and more Chinese elements are appearing in cultural products and fashion designs. Hermes' Shang Xia is not an exclusively Chinese brand, but is also directed at the global market.

XH: As Bei points out, when launching a China-only brand, global brands should consider whether the new brand has distinguishable Chinese characteristics. Hermes' Shang Xia reportedly represented a whole new production line, with all products made in collaboration with Chinese artisans or in-house craftspeople combining traditional techniques with modern designs, harking back to the rural past, culture and luxury crafts of China. However, comments were made to the effect that Honda's Li Nian was simply a cheaper version of its Honda City cars with an altered front face and rear cover, together with downgraded settings. It in fact belongs to the joint venture Guangzhou Honda and was intended to meet the needs of first-time car buyers in China. However, it was not widely viewed as a China-only brand with products available only in China.

Shang Xia has said that sales of its products have gone well so far, with tea sets, cashmere and jewellery among the best-selling items. Guangzhou Honda also regards Li Nian as a success.

There has recently been an increased focus on encouraging domestic Chinese companies to become innovators. What stage of development would you say they have reached? Are particular industries more innovative than others? Are co-marketing and collaborative R&D agreements with global companies key strategies in this regard?

JC: China introduced its Indigenous Innovation policy in 2006 to push for home-grown technologies, with the ultimate goal of transforming its economy from 'Made in China' to 'Innovated in China'. On the whole, actual improvements in innovation performance do not yet appear to be significant. However, certain sectors – such as electrical machinery, computer technology, digital communications and pharmaceuticals – are showing signs of innovative output, as indicated by increased patent filings in these fields by certain Chinese companies. However, most Chinese companies still appear to be chasing quantity, rather than quality, in their patent filings. That said, this trend should change over time, driven, for example, by the science and technology programmes adopted under the Indigenous Innovation policy. It is also an underlying incentive of the policy to foster R&D collaboration (eg, co-innovation and/or co-marketing) between foreign companies and their Chinese partners. The Chinese government is welcoming foreign companies that participate in the science and technology programmes by offering their expertise, providing funding or even establishing their own R&D centres in China (conducting substantive research rather than just making product improvements).

MM: The innovations that the Chinese government is encouraging focus on new energy resources, advanced materials and other emerging and high-tech industries, especially energy-saving and environmental protection technology. For example, photovoltaic techniques and nanomaterials

have been developing rapidly in recent years.

The government is also encouraging collaboration between R&D institutions and domestic enterprises, as the innovation capacity of Chinese companies is insufficient at this stage and the country has invested a lot in state-owned R&D institutions, such as colleges, universities and research institutes. However, a lot of innovations have not yet been applied to actual products and protected by IP rights.

Global companies can assist their Chinese partners with commercialising and managing the fruits of their research, and with the establishment of their IP portfolios.

SZ: Innovation in Chinese companies has reached historic levels. In some industries Chinese companies have entered the top three pioneers globally in terms of technological advances.

Most of this innovation is taking place in the high-tech park zones located in different cities. Beijing's ZhongGuanCun and Shanghai's ZhangJiang are two most active park zones in this regard. The high-tech park zones have policies, capital and training schemes to assist local companies in conducting R&D, developing IP strategies and filing patents.

More multinational companies are collaborating with Chinese entities on R&D, and some of them have set up their own R&D facilities in China. One reason for this is their confidence with the industry and market developments in China, despite ongoing uncertainty in the global economy. Intel Corp set up an Asia-Pacific R&D centre in Shanghai in 2005, while Applied Materials established an R&D centre in China in 2009. More and more innovation should emerge from these R&D centres and help China to evolve from a market of factory plants to a market of innovation.

Is it right to think of China as a single market in terms of intellectual property, or are there regional differences with regard to, say, protection and enforcement which need to be taken into account?

BL: In theory, China should be considered as a single market in terms of intellectual property. However, given the unbalanced development of regional economies, local courts and judges have varying levels of experience.

Since patent disputes are heard before the intermediate courts, which are mainly located in the bigger cities, the trials and results of these cases are comparatively fair and just. According to statistics from CIELA (www.ciela.cn), in 2012 the Beijing court decided 86% of patent infringement cases in favour of the plaintiff; the corresponding figure for the Shanghai court is 85%.

GL: China is a single market in terms of intellectual property, although SIPO has set up several local examination offices in some cities in addition to its central office in Beijing and the people's courts in different cities have jurisdiction to hear patent/trademark infringement disputes. IP rights obtained in China probably have the second-highest value in the world, behind only those obtained in the United States, given China's huge market and population and potential consumer base.

But as Bei rightly points out, differences exist between the courts in terms of the experience of judges and local economic development. Thus, a detailed strategy and appropriate action plan must be clearly and thoroughly devised before formal litigation begins. For instance, some courts have IP tribunals, while others do not. Litigation in courts without IP tribunals is best avoided.

XH: There may also be a few regional differences, or differences in the enforcement practices of the courts and administrative agencies, to consider. Once such issues are formerly addressed by the legislature or the Supreme Court, practices should become unified.

One example is the question of whether original equipment manufacturer (OEM) use of a trademark that is not registered in China, but is lawfully owned by the importer in the country of designation of the OEM goods, infringes the rights of a Chinese registrant of an identical or confusingly similar trademark for similar goods. The courts generally hold that because the OEM goods are not circulated in the domestic market and cause no real harm to the registrant's right to use and benefit from the mark in the Chinese market, this does not constitute trademark infringement. However, administrative agencies generally hold the opposite: that this kind of OEM use does constitute trademark infringement.

Is China an easier or more difficult place in which to do business from an IP perspective than it was two years ago?

GL: China has gradually changed its position from the world's factory to the world's market. On the one hand, to many more international companies want to collaborate with Chinese companies or step up their activities in this big

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marketplace. On the other, they are worried about infringement. Their concern is understandable, but in many respects it is disproportionate. Everyone has witnessed the great efforts and achievements made in IP enforcement in the last couple of years.

For instance, in the new Trademark Law and proposed amendments to the Patent Law, fundamental progress has been made to strengthen the enforcement of trademarks and patents. Among other things, damages can be tripled in the case of serious infringement, and the people's court may authorise the rights holder to examine the infringer's accounts or other financial information to gather evidence of the damages.

International companies doing business in China should take effective measures before they launch their products in China. These include the following:

- Register trademarks and apply for patents as early as possible. China does not require evidence of use when filing a trademark application and recognises the first-to-file principle.
- Prepare and sign collaboration agreements with Chinese entities clearly stating the ownership of innovations and the liabilities arising from any breach of the agreement.

MM: From an IP perspective, we would agree that it is easier to do business in China today than it was two years ago.

First, the government continues to emphasise IP strategy in national policy and the public has more knowledge of intellectual property and heightened awareness of civil rights protection.

Second, IP judges and other professionals working in the IP field have gained more experience and more guiding cases are available as a reference, although China is not a common law system.

Third, judgments are becoming more transparent, as increasing numbers of judgments are published on the official websites of Chinese courts. It is reported that 47,422 effective judgments had been published online by the end of 2012.

JC: Following on from what Grace and Michelle have said, it is also interesting to look at the statistics on judicial IP cases in 2011 and 2012, which suggest that adjudication quality and efficiency appear to be improving. The clearance rate of first-instance civil IP cases at the local courts in 2012 remained at the same level as in 2011 – 87.61%. Meanwhile, the appeal rate fell from 47.02% to 39.53% and the rate of overrulings or remand for retrial increased from 3.66% to 5.46%. The percentage of first-instance civil IP cases that concluded on time increased from 98.57% to 99.24%.

Stronger IP protection is also being accorded through the criminal tribunals. For first-instance criminal cases involving intellectual property, new filings accepted by the local courts increased by 129.61% to 13,104 cases in 2012, including 7,840 IP infringement cases (4,664 involved trademark infringement). This represents a 150.16% increase on the figure for 2011. Meanwhile, the number of first-instance criminal cases involving intellectual property concluded by the local courts increased by 132.45%, to 12,794 cases. Judgments were effective against 15,518 people (54.33% more than in 2011), 15,338 of whom were given criminal sanctions (94.35% more than in 2011).

How do you expect the IP landscape to change in China over the next two years?

MM: This year marks the midway point in the implementation of the Twelfth Five-Year Plan and is the first year in which China is being run by the newly elected government. In view of changing economic policies and IP policies, the new government has shown its interest in real effects-driven principles, and has prioritised improved quality and efficiency over improved speed and quantity.

According to the 2008 National Intellectual Property Strategy Compendium, China's main goals include leading the world in terms of the number of granted invention patents per year and significantly increasing the number of patent applications filed by Chinese companies in other countries. However, the 2013 IP Promotion Plan emphasises that the government should direct companies to shift their focus from patent quantity to quality. This change in policy may increase the need for advanced professional services in the IP industry.

More judicial interpretations and guiding cases will be issued by the Supreme Court, in order to harmonise standards of judgment. More trials and judgments will also be open to the public, in order to promote confidence in the reform of the judicial system.

SZ: First, we are looking forward to publication of the Fourth Amendment to the Patent Law. The State Council submitted the amended Patent Law to the Standing Committee of the National

People's Congress for approval in late 2012 and it will probably be published in 2014. Similar to the Trademark Law, crucial amendments have been made to the enforcement of patent rights, so patent owners are very much looking forward to its entry into force.

Second, if the amended Patent Law is approved in its current form, administrative enforcement of patent rights will increase. Consequently, there will be more seminars and programmes focusing on how to improve the capabilities of local patent officials to determine patent infringement. Patent owners will have greater opportunities to enforce their rights quickly and cost effectively. Also, utility models will become even more popular with innovators, since the administrative actions are more appropriate for utility models.

Third, as Chinese entities become increasingly patent rich, we hope that more and more patents will be commercialised successfully. The Chinese government will doubtless issue more active policies to guide and encourage entities to utilise their IP rights.

JC: I expect that the passage of new amendments to the Patent Law, Trademark Law and Copyright Law, together with revisions to the relevant implementation regulations, intended to address long-outstanding IP issues (eg, time-consuming registration processes, insufficient government agency powers in handling IP infringements), will improve the IP system for businesses. Organisations will be able to secure IP rights in China more quickly and smoothly, utilise their rights more freely, and enforce their rights against infringers more efficiently and effectively.

GL: The new Trademark Law will take effect on 1st May 2014. We are looking forward to the revision of the implementing regulations, to ensure that the amended Trademark Law can be easily implemented in practice. Specifically, new provisions are needed on how better to protect the good-faith registration and use of a trademark, how to speed up opposition and TRAB review proceedings and so on. *iam*