The truth about China

The reports about IP and China in the mainstream media and the actual truth are often two completely different things, say a panel of experts taking part in this special roundtable

By **Joff Wild**

The Chinese market continues to attract significant interest from companies around the world. For those already in the country, as well as those still thinking about establishing a presence there, intellectual property issues are often a primary concern. If most of the headlines are to be believed, China is the IP wild east, where anything goes and piracy, appropriation and counterfeiting are the norms; with low penalties and lax enforcement meaning that no realistic deterrents exist.

However, ask those who know about these things and they will tell you that the headlines are at best misleading and at worst a gross distortion of the reality on the ground. To get to the truth, *IAM* put together a panel of experts with extensive experience of operating in China and of representing their clients' interests there. We asked them to set the record straight. Taking part in this special roundtable are: Chris Bailey of Rouse; Connie Carnabuci of Freshfields Bruckhaus Deringer; and Scott Chambers of Patton Boggs.

What do you consider to be the most significant development to have taken place in China as far as IP owners are concerned over the last 12 to 18 months?

Scott Chambers: *There have been a number of evolving developments regarding IP law in China. China does not ascribe to common law developments, but is a legal code system. Consequently, if the IP legislation does not change, it is sometimes difficult to determine whether significant developments have occurred until a clear pattern is shown. Over the last 12 to 18 months, there have been no formal modifications to the patent, trademark, copyright or anti-unfair competition laws. These, of course, are the fundamental IP laws. Thus, one could argue there have been no significant developments achieved in China as far as IP owners are concerned during the last 12 to 18 months.*

With respect to evolving developments, the Draft Modifications For Patent Law, available on the internet, suggests that patent owners will be under more restrictions than ever when they protect and enforce patent rights. Thus, patent owners will be under scrutiny by the courts when they proceed with infringement actions and will be subject to serious review of the validity of their patents.

One propitious signal of development of IP law in China is the ruling in Zheng Tai Group v Schneider. *In this case, the court of first instance awarded very large damages in the amount of RMB330 billion (over US$45 million). That case suggests that IP infringement is becoming more expensive to infringers and that damages calculations are becoming more sophisticated in Chinese proceedings. This case is currently on appeal.*

Another positive signal can be found in some of the more recent judicial interpretations of the Supreme Court, which suggest that the protection of IP in China will be strengthened and the scope of IP overall may be broadened. Although such judicial interpretations do not have the force of law that they would under a common law system, they are given great deference by the Chinese courts.

Chris Bailey: *In terms of the draft Patent Law, one significant development was the legislative process. There was an unprecedented level of consultation with industry and with international experts as these were being framed, and the strong objections about earlier drafts have resulted in a more balanced law which is on track for approval.*

A negative development has been the delay in the draft Trademark Law. While the original draft proposed controversial changes, overall the delay means that there is no improvement in the parlous state of trademark examination and review, which is backlogged and choked.

Another key development is the National IP Strategy. This is not simply a grand-sounding document; it sets out some very specific objectives in terms of legislation and policy, giving IP owners and practitioners a clear indication of what the future holds.

Finally, in relation to IP crimes, in April 2007 the Judicial Interpretation (II) lowered economic thresholds for criminal liability, while in the same month the US filed a WTO complaint, including claims that China's thresholds violate TRIPs. It has been widely leaked that the US lost this part of the case, and these developments have derailed the argument that the economic thresholds are a barrier to criminal enforcement. Focus should now be on capacity building in the criminal system and stiffer penalties.

Connie Carnabuci: *The* Starbucks *case, which was decided in 2007, has also been a very significant development. Starbucks won a trademark infringement lawsuit against a local competitor, which had adopted the Chinese version of Starbuck's name (Xingbake) and substantially copied its logo. The Shanghai Municipal Higher People's Court, in a landmark decision, upheld an earlier decision of the Shanghai Second Intermediate People's Court and ruled that the Chinese version of Starbucks was a well-known trademark, and ordered the local competitor to cease using the Chinese version of the Starbucks name and similar logo.*

Shanghai Xingbake argued that its prior successful registration of Xingbake as part of its company name gave it a legitimate prior right in the name. However, the court recognised that it was illegitimately attempting to take advantage of the reputation and goodwill associated with the Starbucks name. Shanghai Xingbake was consequently ordered to stop using the name and logo, make a public apology and pay RMB500,000 damages.

This case is significant on a number of fronts. It was a promising sign for foreign investors because it demonstrated that the courts are becoming more willing to apply well-known trademark principles to protect the intellectual property of foreign enterprises. It additionally shows that it is possible to obtain legal redress in the Chinese courts when intellectual property rights are infringed. The case also gives some guidance on which factors the court will consider when determining what constitutes a well-known mark. Factors the courts considered in the Starbucks *case were publicity and marketing, the length and geographical scope of the mark's registration and use, and the reputation of the mark.*

Is China the IP black hole that it is so often portrayed as?

CB: *I think the opposite is true — it's an exploding galaxy! In terms of legislation, of course laws and regulations have lagged behind the speed of the country's development, but nevertheless, legislative changes have been made relatively quickly. I will soon be working under the third patent law and third trademark law since I started in China 13 years ago.*

In terms of economic activity, foreign investors are now moving from somewhat defensive positions, where enforcement is their key concern, to ones where they are starting to realise returns from IP in their investments, and establishing R&D activities here. That can only be happening due to increasing confidence in the legal system.

Accompanying this is the maturing of China's enterprises. These are becoming owners of IP themselves and therefore equal stakeholders in the system. Many people are unaware that the vast majority of IP civil litigation in China is between Chinese companies, not foreign versus Chinese. Finally, the concept of IP as a strategic asset has developed quickly in China — for example, several commercial banks now offer loans secured against IP, with RMB6 billion in patent securitised loans registered last year, according to SIPO.

CC: *The prospect of enforcing intellectual property rights in a country as vast as China is definitely a daunting one. However, the key is understanding that enforcement and protection of intellectual property rights in China need to occur on a number of levels. Certainly understanding the judicial and administrative avenues for enforcement and understanding the rules in respect of forum selection are fundamental. Also key is understanding the very valuable role which Customs can play in ensuring that counterfeit product never reach export markets. Further, ensuring that rights owners properly register all of the intellectual property rights which they can register in China is critical to success. More often than not, problems arise*

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because foreign rights owners have not taken adequate steps to properly establish and secure their IP portfolios in the PRC.

Beyond the legal measures which one can take, there are a number of critically important operational and business process measures which supplement the legal measures and which, in combination, provide a more comprehensive means for protecting, enforcing and commercialising intellectual property. Specifically, this will include operational protocols such as: segregating access to sensitive IP; adopting certain offshore/onshore structures and critically assessing how much of the crown jewels actually need to be placed onshore. It is also important to implement onshore HR policies that build loyalty and an understanding of the value of the intellectual property to the company, and in turn to its employees and shareholders. Closely monitoring and managing the supply chain is also key.

Despite all these measures, there is no doubt that a disconnect may still occur between central and local or provincial governments. The central government may communicate one set of laws and policies, but the enforcement of them at the local or provincial level may at times not meet the objectives of central government. That said, the recent work of the specialist intellectual property courts within the Third Civil Division has been particularly encouraging. The sophistication with which these specialist tribunals are handling complex intellectual property matters, given their relative short history, is to be admired.

***SC:** I do not believe that China is an IP black hole and, more importantly, nor do the firms we work closely with in the country. A large part of this issue is taking the time better to understand the system and partner with law firms in China that have extensive experience with the legal system over there. One of the firms we partner with has represented clients in more than 300 litigations. In these cases, the IP owners, both in China and abroad, have been successful in about 80% of all cases.*

More specifically, people say that IP laws in China do not provide enough deterrence value to would-be infringers and that, in any case, it can be difficult to enforce rights. Are these claims fair?

***CC:** It is fair to say that establishing claims for high damages awards in PRC judicial enforcement of intellectual property rights is difficult. This arises partly from the fact that the PRC civil procedure law does not provide for any pre-trial discovery of documents and parties are not required to disclose to the court all relevant documents that they control or that are in their possession. This often means that proving the level of damages incurred can be difficult and a plaintiff may be left with the prospect of recovering only statutory damages (which currently are set at a maximum of RMB500,000, but are under review and may soon be increased to RMB1 million).*

In exercising its discretion to determine how much of the statutory damages to award to a plaintiff, the court will have regard to the length of the period of infringement, the scale of production and the price at which the product has been sold or offered for sale. It is the stated position of senior judges of the IP division that in exercising their discretion they should seek to create a deterrent effect through the award of statutory damages. That said, to date, with a few notable exceptions, damages awards in the PRC have been relatively modest compared to damages awards available in jurisdictions such as the United States.

***SC:** Clearly, this perception has existed for several years and as IP protection has improved around the world, China has come under more scrutiny. While the Chinese legal system can be faster and less costly than the US system, the current system of calculating damages results in awards that may be too low to create the financial deterrence necessary for good IP protection. Nevertheless, it is important to recognise how far China has come in its IP protection in the last five years. We expect it to continue its astronomical growth in this area given the importance IP protection is likely to have in the future development and advancement of its economy. We recommend that our clients seek the protection now that they will need to use 10 or 15 years from now. Because of the importance of relationships in China, we also feel it is important to begin to develop those relationships now.*

***CB:** To an extent, these claims are fair — depending on the nature of the rights you wish to enforce. Copyright owners, for example, have suffered disadvantages in pursuing administrative and criminal actions compared to trademark owners. As Connie and Scott have said, economic penalties, whether administrative or through the court system, are often disappointing to rights holders, punitive damages do not exist and preliminary injunctions are rarely applied. There have been a few recent cases involving enormous damage awards (by Chinese standards) but currently these appear to be exceptions.*

In addition, there are inconsistencies in both procedure and implementation. The documents required for administrative

enforcement, or the time taken to obtain a court order may vary radically even between neighbouring cities or districts. So enforcement difficulties often arise through inconsistency, which raises the cost and lowers the speed of enforcement.

A project we are currently involved in — the CIELA database, which looks at IP enforcement decisions nationally — should soon have enough data to provide a proper statistical analysis of the relative strength and weakness of deterrence by type of action and venue.

Turning now to specific rights, how can copyright and trademark owners put themselves in the best position to avoid problems in the Chinese market?

SC: *These are very broad questions that are very fact dependent. For copyright owners, we recommend they officially register their works, so as to provide easy access to the courts to protect their works from infringement.*

For trademark owners, registration is extremely important in China. This is because without registration there is no protection; the only exception to this is for marks determined to be famous. In addition, companies interested in protecting their marks should appreciate that they also need to explore obtaining related marks. As the mark or product becomes widely used in China, it will often become associated with a Chinese word or symbol. The client can either let these nicknames spontaneously arise without any formal client ownership rights or it can make sure it controls them by registering for the trademark. Thus, it is incumbent upon the owners of the marks to police them and ensure they register for the additional necessary protection.

CB: *The answers to this question always sound blatantly obvious, but the following points are often the root cause of most IP-related issues:*

1. *Ring-fence your rights with defensive registrations — not just core trademarks in core goods, but other unique identifiers and on related goods/services. As Scott says, Chinese version marks should be used and marketed to avoid Chinese "nicknames" being adopted outside of your control.*
2. *For copyright, set up procedures to document chain of title, particularly where third parties are involved in creation.*
3. *Infringement in China is commonplace. Expect problems and conduct risk analysis.*
4. *Careful partner selection and robust contracts which are clearly understandable to the other party are crucial. Where IP is the main component of a deal (for example, a technology transfer or joint R&D project), get advice from an IP-specialist firm.*
5. *There is now plenty of information on which law firms in China have leading IP practices, so seek their advice. Don't stick to your usual corporate firm if they are not on this list.*
6. *Learn from peers in the industry. Late movers in this respect may have an advantage by avoiding legacies of past mistakes made by earlier entrants.*

CC: *Given the time lag to achieving registration of trademarks in China (currently between 24 and 36 months for the application to be examined), it is important to move quickly to ensure that the appropriate filings are made as early as possible, so as to ensure that registration coincides as closely as possible with the intended launch date for market activity in the PRC. It is important to remember the close relationship between domain names and trademarks and also to consider registration of corresponding .com.cn and .cn TLDs both in the original foreign language and in Chinese, to complement the trademark filings.*

If they do run into problems, what strategies can they put in place to ensure that these are dealt with as quickly and as effectively as possible?

CB: *First of all, go to a firm that has a strong reputation in IP enforcement — many traditional trademark and patent firms do not have the requisite experience.*

Ensure that you have gathered intelligence to give yourself a clear overview of the scale and nature of the problem, and gather evidence in a way that leaves you with as many options as possible. Local investigation firms may try to take short cuts to an apparently quick and easy fix without giving you real information, and without regard to the legal remedies that are best suited to the case. For example, preparing evidence for a patent infringement case in the civil court requires a very different level of expertise from tracking down counterfeit products.

I would also recommend teamwork between the local business unit, which can provide a lot of support, the local lawyers and the corporate counsel.

In terms of speed, the level of organisation and turnaround time for overseas evidence (which must be notarised and legalised) can strongly affect success. We have seen many cases which were severely compromised because the instructing counsel overseas simply couldn't get their act together.

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CC: *If a rights owner discovers that an unauthorised third party has hijacked its brand in China and either has made a filing for the trademark in the original foreign language, or has created and filed for a Chinese translation or transliteration of the trademark, then it is essential that a watch be placed on that application so that appropriate steps to oppose can be taken, as and when the application proceeds to acceptance. When it comes to entitlement to a particular trademark, however, under the PRC trademark law, prior rights can be relied on as a basis for opposing trademark registration applications that a third party makes in bad faith. Similarly, if you find that your domain name has been misappropriated by a cybersquatter, then in respect of the .com.cn and .cn TLDs it is possible to take quick and effective action through the China International Economic and Trade Arbitration Commission (CIETAC), the body appointed by the China Internet Network Information Center (CNNIC) to manage .com.cn and .cn domain name disputes in accordance with the CNNIC Dispute Resolution Procedure.*

SC: *One of the best procedures a company can put into place is a system to monitor the use of its intellectual property and any infringement or unprotected use. Companies should make sure that they are constantly being proactive regarding the protection of their IP in China. They should seek the assistance of competent outside IP counsel and have a liaison within the company that can establish a system of proper monitoring.*

What are the main issues that patent owners should be aware of when operating in China and how can they deal with them?

CC: *Patents have become an important battle ground in China. There are a number of issues which patent owners should be aware of when operating in the country. One of the most important is that utility model patents (in respect of which 10 years' protection is granted, as opposed to the 20 years for invention patents) proceed to registration without substantive examination. This may mean that there are a number of junk patents on the register in China, which may appear to block one's freedom to operate. However, on closer examination such registrations may be vulnerable to invalidation for lack of novelty or other fundamental problems with the patent claims.*

The second key point to note is that an application to stay infringement proceedings can be filed within the 15-day time period prescribed for the filing of a substantive defence (this period can extend to 30 days in cases involving a foreign related party) under the PRC civil procedure law, where an application for invalidation has been filed with the State of Intellectual Property Office (SIPO). If the patent in dispute is an invention patent (which would have undergone substantive examination), then the court may exercise its discretion not to stay the proceedings, pending the validity application. If the patent in dispute is a utility model patent (which has not undergone substantive examination), then the likelihood of the stay being granted is much higher. China has a bifurcated system and validity is dealt with exclusively in Beijing by the Patent Re-examination Board (PRB) within SIPO. Decisions of the PRB can be appealed to the Intermediate People's Court in Beijing. Invalidation proceedings can take between 12 and 24 months at the PRB and a further six to 12 months, if appealed to the court.

A third point to highlight is that patent infringement claims must be brought before the intermediate people's courts competent to hear patent matters. Currently, only 62 intermediate people's courts are specifically authorised to hear patent disputes, compared to the 350 or so that are also authorised to hear trademark and copyright disputes. The purpose of limiting the courts which can hear patent disputes is to try to concentrate the know-how in respect of these more technical and difficult cases, hopefully leading to greater efficiency and accuracy in the handling of these types of dispute.

SC: *Patent owners should recognise the inherent difficulties in protecting patent rights in China and understand, as part of their strategy, that these problems will not be solved quickly. In China, patent owners have to be watchful for potential infringers and try their best to stop the infringement as soon as they become aware of it. Because the legal system can react quickly with a minimum of cost, IP owners should be willing to move rapidly if an infringer begins to enter the market. Once the infringer is at full production and has established distribution and sales channels, it is far more difficult to obtain a satisfying result in the Chinese courts.*

CB: *Right now, patent owners should be aware of the changes being introduced in the new patent law which is likely to be promulgated early in 2009.*

One obvious but recurring issue is translation of patents. Patent owners should spare no effort to have the translation reviewed very carefully by attorneys with the relevant technical expertise.

Most of the key issues revolve around

enforcement and the practicalities of litigation, such as a two-year statute of limitations; the lack of a discovery process, making evidence collection difficult; selection of venue and the threat of declaratory judgments; the scarcity of preliminary injunctions; and generally low damages awards.

Other more recent issues for holders of strategic industry-level patents is the threat from the new anti-monopoly law regarding abuse of IP rights, a definition which is currently vague, and a July 2008 Supreme Court ruling which threatens to weaken the commercial value of patents which are incorporated into standards.

Patent applications are now at an all-time high at SIPO. Is the office in a position to deal with these efficiently and to grant patients of an acceptable quality?

SC: *It is hard to say whether the current policies and procedures in place are at a position to grant patents with strong claims efficiently. It is clear that SIPO is taking great strides to improve its system and have the patents granted in China be treated as serious legal rights provided to patent owners. It has been partnering with the USPTO in some of its training of examiners. Interestingly, when the US filed its dispute over IP issues at the WTO, many of the bilateral initiatives between the US and China were frozen or moved to the slow track. One major exception was the bilateral work on patent examination quality and process. That work continued without any serious slowdown.*

CB: *I agree with Scott: there is no clear answer to this. With the rapid growth in applications, it is natural that SIPO faces problems with capacity. The quality of examinations is inconsistent and depends on the examiners and the technical background involved. SIPO should be commended for employing more examiners and has tried to improve the quality of patents granted by setting up a supervision department. SIPO is also working actively with the EPO and other patent offices on shared initiatives in searching and examination.*

CC: *SIPO has invested significantly in developing the quality and quantity of resources which it has available to deal with the exponential growth in patent filings — 4 million patent applications were filed with SIPO from 1985 to 2007. China is on course to overtake the US as the world's largest patent-filing jurisdiction by 2012.*

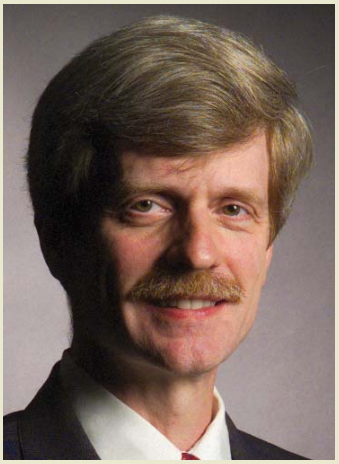
As Scott and Chris say, SIPO has consulted broadly, including with both the European and US patent offices, in respect of best practice and training of patent examiners, and the general handling of patent prosecution matters. Recent folklore suggests that SIPO has decided to place its most experienced examiners in charge of foreign-related patent applications, and to place less experienced examiners in charge of filings made by PRC legal persons. Of course, this has in no way been substantiated. However, the underlying sentiment in the commentary is that the Chinese authorities, including SIPO, wish to present themselves in the best light possible to the international marketplace, and wish to take all steps and measures necessary to bring their standard of practice to a level equal to the international standards, which enables China to continue to attract foreign investment.

With regard to the courts, can we expect to see an increasing number of patent cases involving foreign rights holders? What level of expertise can foreign rights owners expect from the courts?

CB: *Based on the trend over the last 10 years, definitely yes. But a more interesting development is that foreign companies may increasingly find themselves defendants and not only plaintiffs. In terms of expertise, overall it has been noted by many commentators that IP has received disproportionately more attention and resources compared with the civil courts generally. The quality of IP judges, who are closely in touch with developments overseas, is consequently higher. However, the experience of judges is unevenly spread. Although there are more than 400 courts designated to hear IP disputes, of which 68 may hear patent cases, currently Beijing, Shanghai, Guangzhou and Shenzhen see the overwhelming majority of IP cases. So an issue that should concern rights holders is the experience of the court and for this reason plaintiffs tend to flock to these perceived safe venues.*

However, based on the CIELA database project, which has statistics on more than 30,000 published and unpublished civil IP judgments from the past three years, we are finding that there can be significant advantages to a plaintiff choosing a provincial court over one of the main cities. To take one example, we found that compared to Beijing, the Xiamen court on average awards damages to plaintiffs more often and at a significantly higher quantum for certain types of case.

CC: *It seems that Chinese rights owners have become increasingly aware of the importance of strategic/tactical litigation in defending market share and to enforcing their legitimate*



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rights actively. While the litigation culture in China is still relatively nascent, there is a clear signal that Chinese rights owners are becoming more proactive in enforcing their rights against foreign defendants.

The level of expertise which foreign rights owners can expect from the Chinese court is steadily improving. With the establishment of the specialist Third Civil Division and the appointment of more than 60 authorised patent courts across the country, we are progressively seeing a growing sophistication and understanding in the conduct of patent litigation in China. Many of the judges appointed to hear patent disputes hold relevant technical training, as well as legal training. Since China's accession to the WTO, all judges are now required to have passed appropriate entrance examinations.

China is a civil law system and it is important for foreign rights owners to understand that the role of the judges is much more active than in common law courts. Chinese judges will regularly call informal pre-hearings with legal counsel, and can request and challenge evidence, question witnesses and consult experts. If technical questions in patent proceedings remain unclear or disputed, the court may appoint one or more experts.

Some provinces are more developed than others and have pre-selected panels of available experts. Beijing, for example, has panels established for eight technology sectors, with up to 50 experts on each panel. The usual procedure is that the parties may agree the relevant panel, failing which the court will choose. The parties are then permitted to veto some experts from the panel on grounds of bias and the like. Finally, the court will select up to five of the remaining experts. The parties will not know until trial which experts have been selected. The experts will produce a technical report for the court. At the hearing, both parties formally present their arguments and evidence.

SC: *Yes, we believe there will be a significant increase in the number of patent cases filed in China and involving foreign rights holders. In China, the courts of economically developed cities and provinces, such as Beijing, Shanghai, Shenzen and Zhejiang Province, are at a higher level of patent expertise than other less developed areas. If possible, we would recommend bringing actions in these courts for IP issues.*

A senior judge of the State Supreme Court has recently spoken about standardising the way in which damages are assessed in IP cases. Is this a welcome development? Will it have any practical effect?

CC: *Given the lack of pre-trial discovery, calculation of damages has been a difficult issue in intellectual property cases in China. The maximum — which is proposed to be increased from RMB500,000 to RMB1 million under the current revision of both the patent law and the trademark law — still remains a relatively insignificant sum and even then is awarded only in exceptional cases. This effectively means that plaintiffs do not typically litigate in China for the purpose of recovering significant damages.*

Rather, the purpose of litigation is to send a message to the market that an owner intends to assert and protect the intellectual property it has developed and is seeking to commercialise to drive an acceptable return on its investment. Certainly, clear guidance on the way in which damages should be assessed, which would be universally applicable across all courts competent to hear intellectual property disputes, would be helpful. What such guidance would suggest is as yet unknown and this will influence whether such guidance would be a welcome development.

SC: *We believe it will be a welcome development because it will provide more certainty in the litigation process. Of course, the State Supreme Court always plays a very important role in practice. Although the judicial interpretation is not law in China as it would be under a common law system, in practice it is the first applicable rule in Chinese courts. If the State Supreme Court issues some regulations about standardising the way of assessing damages, they will definitely have a practical effect on the rulings of other courts.*

CB: *Again, referring to the analysis in the CIELA database of civil judgments compiled so far, we can see wide discrepancies in the methodologies used. As with many aspects of the judicial system in China, lack of consistency is the norm and in the absence of a body of well-established judicial rules, the Supreme Court is becoming more active. The main concern, however, is that damages assessment is an area of considerable art and interpretation, and it will be difficult for the court to apply a one-size-fits-all template. It is likely that jurisprudence will have to evolve, rather than leap into effect from one piece of legislation. However, any guidelines which establish a more professional and consistent framework will be welcomed and may help overcome the perceived caution with which judges currently treat awards. Recent cases attracting comment for the huge awards given — such as the* Schneider *case that Scott has already mentioned,* Yamaha v Huatian *and*

Tuopu v Tailong — *confirm that damages assessments need regulation, as the basis for these awards seems to be very different and, in at least one of the cases, bias towards local interests likely played a part in the large damages award.*

When you compare China now to five years ago, how do you think things have changed? What do you expect from the next five years?

SC: *During the last five years, the approach to IP has changed; specifically, the understanding of the rights and restrictions of IP has become much stronger. More and more people have realised that IP rights are very important for their livelihood and the advancement of China's economy. We anticipate that in the next five years, the courts will continue to become more comfortable with enforcing IP rights and awarding damages sufficient to deter infringement. We expect to see IP judges being selected from the existing pool of qualified IP lawyers in China which should hasten these changes.*

CB: *Five years ago, while a new set of laws was in place in line with WTO entry, the options for enforcement were poor — criminal and civil courts handled very few cases and pursuing such cases involved a great deal of uncertainty. As a result, the vast majority of enforcement was through unsophisticated administrative channels. You sensed that economic growth at any cost was the priority and, at local level, many governments did not seem to believe that IP was important for China's future.*

With the new leadership has come a focus on sustainable development and emphasis on the knowledge economy. In many sectors the low-cost manufacturers are forced to close or move up the value chain. In the next five years, the major trends will be:

- *A rapid increase in the number of Chinese companies expanding internationally, wielding globally important IP rights.*
- *Far more influence for the courts, with the administrative system becoming largely subordinate to them.*
- *A system which will tend to limit the power wielded by patent owners.*
- *A liberal trademark law and streamlined registration and review system, and tougher sanctions for infringement.*

CC: *The main change is the degree of transparency and the impressive number of laws and guidance which have been issued in order to assist rights owners and practitioners to understand and better navigate the landscape in China. Also important is the significant progress that has been made, through the specialist intellectual property courts, in developing the sophistication with which judicial enforcement of intellectual property disputes is conducted. Over the next five years we should expect to see a further maturation of the implementation of the laws and the administration of the laws, through both the intellectual property agencies, such as SIPO, and the specialist IP courts.* ■