

Cutting through the noise of the current US-China trade war is very difficult. The statement that “China just steals our IP” is common. A frequent accusation paints China’s intellectual property (IP) system as weak and biased against foreign firms. The reality is quite different. As the CEO of Rouse, the largest foreign IP advisory company operating in China, says: *“The anecdotes that people seize on to reinforce their biases - that China does not respect IP and therefore will never be an innovative nation – at their root are frequently about Western corporate failures deriving from poor strategic decision making, weak due diligence and a haste to gain market share.”* So, what is the reality?

I am talking with two audiences here today – those from the UK and those from China. There are different messages for each, but consistent and from a common basis.

The three key tests of a country’s IP system are: the quality of its basic legal structure: the strength of the patents that are awarded; and, whether you can enforce those patents through the judicial system. On each count China is now at, or close to, world standards and better in many respects than the US.

China has been building a world class IP system since the early 1980s. With technical assistance from the German Ministry of Justice it has built an IP legal structure that is now rigorous and impartial with judges well-trained in IP. However, it is a civil law system, like Germany, not the common law system that we have in the UK or US. US lawyers complain that in China they cannot get ‘discovery’ (getting evidence from the other party) or that they cannot have their many (very expensive) days in court. That is because civil law systems have different processes for obtaining evidence and arguing in court.

The patents granted by the Chinese Patent Office’s well-trained patent examiners are now internationally recognised to be of good quality. As a sign of things to come, Chinese companies and universities today take their IP very seriously, filing more domestic patent applications than the next four countries combined.

It is no use having a patent unless you can enforce it. China has an extensive IP court system staffed by professional IP judges. Appeal analyses and judgements from the IP Tribunal of the Supreme Court in Beijing are sophisticated by global standards. Court cases take only about ten months to judgement compared with several years in Europe or many years in the US. Costs including appeal are low - \$50,000 to \$250,000 compared with \$250,000 to the low millions in Europe and often \$5 to \$10 million in the US. Rather than the current highly adversarial and expensive US system, the Chinese system encourages good-faith negotiations between parties before trial, but it has very strong injunctive remedies for the patent owners if they win in court.

Finally, foreign companies have a very high success rate litigating against infringers in China. For example, 84% of foreign companies win their patent cases in the Chinese courts compared with about 50% of foreign companies that succeed in the US courts. More foreign companies win their patent cases in China than Chinese companies – no bias there. Although financial

awards for infringement are still low by international standards, they are steadily increasing. Chinese companies take their patents seriously with 16,000 patent litigation cases filed in 2017 – four times the number in the US. Some foreign companies are now litigating their IP disputes in China – such as Apple and Qualcomm suing each other.

So why is there a constant refrain about IP theft by the Chinese? Many of the examples people cite are the result of companies not registering their rights in China – if you have not filed your patent in China you have nothing to enforce. For example, UK companies file fewer patents in China than the Swiss or the Dutch and less than one fifth those of German companies. Overall, China receives less than half the number of foreign patent applications than the US, even though the two markets are now similar in size – and the Chinese market will certainly be larger than the US market over the 20-year patent life. Many of the IP problems of foreign companies are self-inflicted wounds, caused by senior managers who do not understand the nature and risks of the IP on which their companies today are largely based.

Based on its industrial objectives China still does have some constraints about company ownership and joint ventures. As agreed with the WTO these are being phased out in some sectors – for example the car industry by 2022. Others can be avoided through tough negotiations by people who understand China – and speak Chinese. Not understanding how to operate effectively in China is a common factor underpinning many complaints. Many companies do operate effectively and profitably in China – Dyson, Microsoft, P&G, Philips. But for them understanding the Chinese market is a competitive advantage – why should they tell their competitors how to operate effectively in China? So they do not explain it.

The noise about alleged IP theft obscures the fact that China is rapidly building an IP-based economy. Premier Wen Jiabao said on many occasions that '*competition in the future will be competition in IP*'. Few other countries have such a thing, but China's Third Five Year National IP Strategy has twenty components – one of which relates to education. In Tianjin (population 15m) where I am an advisor to NTEM, primary schools have an IP tutor with children being taught about patents, copyright, trademarks and designs from the age of five (here are the comic books for the seven-year olds).

My message to the UK people here is – embrace China and the opportunities it offers. China is becoming an innovative country – as it was in the past. Collaboration is not a zero-sum game – properly constructed it benefits both parties. By being part of the directions that China is now taking – whether it is in graphene research for batteries and structures, or choosing to bypass Phase 3 trials for long term diseases such as dementia – respect for IP should not be a barrier. Rather, UK researchers must take IP more seriously than they often do today. Good IP is a foundation for good collaboration. In addition, ignorant rejection by the US creates an opportunity for the more knowledgeable UK to step in.

My messages to the Chinese participants here today are: first, you need to find better ways of communicating what is really happening in IP, in China today, to the rest of the world. The facts I have quoted – and there are many more I could have used – just are not widely known. That is a challenge for all of us to address. Second, where there are visible things that China

could do where there has been justifiable concern – such as the vexed and much-debated question of required JVs – then it should both act, and clarify what the situation is, so that it can demonstrate that it is taking action where action is needed, or rebut ill-founded accusations.

There is a major opportunity for the UK to work even more closely with China in the research areas. IP is not a barrier, it is an enabler.

Thank you.