

# Intellectual Property in China:

## Myth & Reality

**Ian Harvey**

*Tsinghua University, Beijing*  
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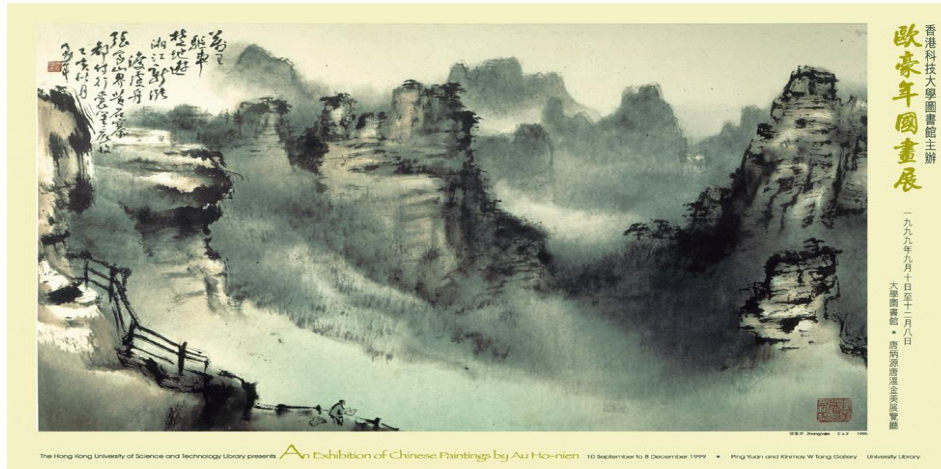
**April 5, 2017**

# Ian Harvey – Background



- 1960s: Engineer by training and experience
- 1970s: Harvard Business School, World Bank – Asia and Africa
- 1985-2004
  - BTG CEO: patenting and licensing publicly-funded research
  - Chair: UK IP Institute and Government IP Advisory Committee
- Most CEOs today do not understand the IP their companies are based on
- From 2004 – working in/on China helping Chinese and foreigners

# China's history in IP



- For 3000 years – copying paid homage to a master
- Between 1945 and 1979 little interest in developing a legal system as we know it
- 1979 - administrative and criminal law reform started
- IP law - early beneficiary

# Analysing IP in China

- **Legal structure**
- **Acquisition of rights**
- **Enforcement of rights**
- ***Direction of travel***

# IP in China

- **Legal structure**
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  - **4 subsequent modification/updates – more underway**

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  - **Major training program for many new examiners – also outsourced**
  - **Examiner/application ratio now in line with other countries**
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  - Examiner/application ratio now in line with other countries
  - Reasonable cost and time
- **Enforcement of rights**
  - **Rapidly improving – but regional differences**
  - **Sophisticated judgements – excellent Supreme Court**
  - **Continuing training underway for IP judges**

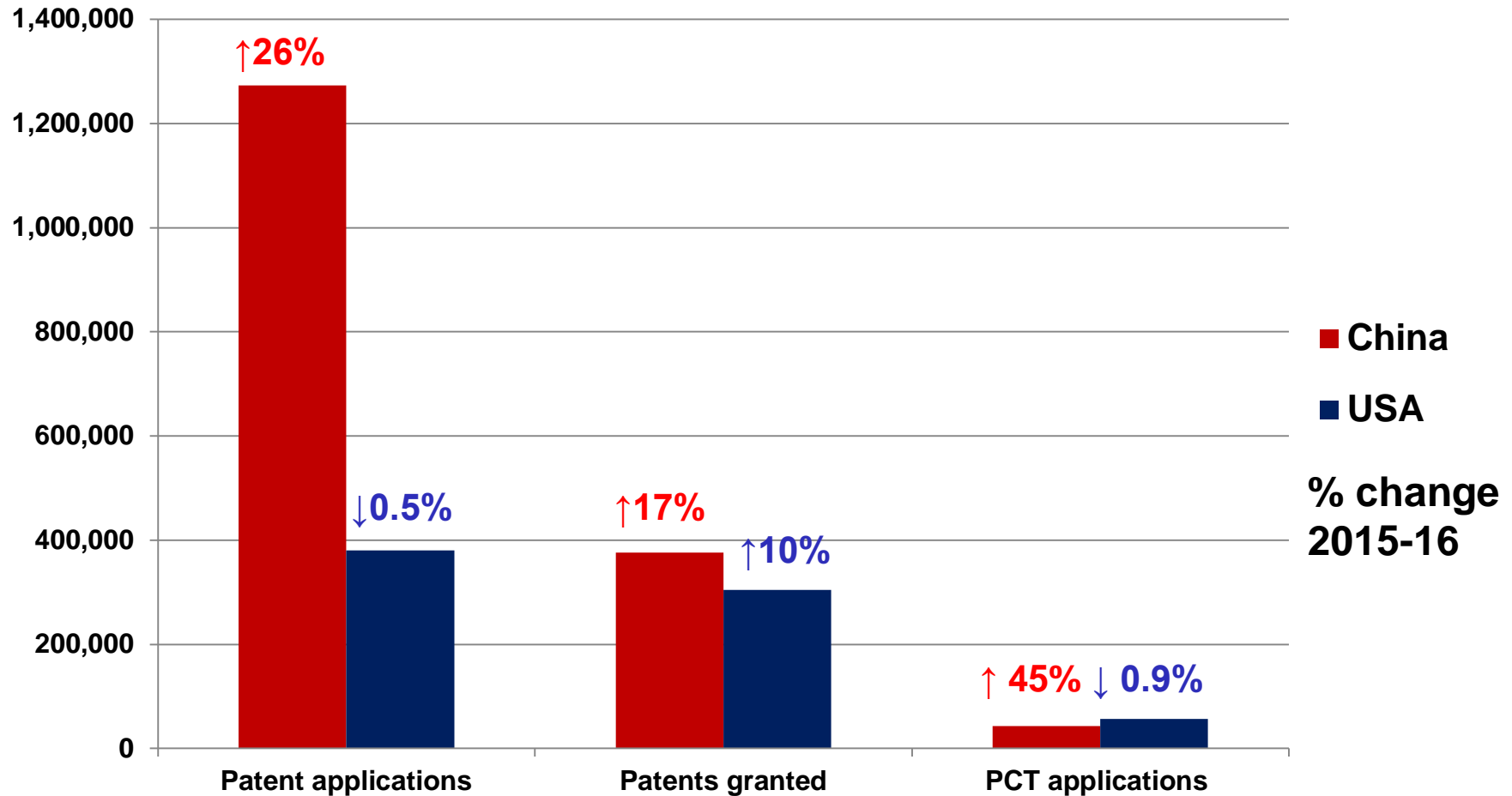
# “Invention patent” enforcement costs in China are not high ....

- **Litigation: filing suit to enforcement**                      **\$60 – 120k**  
**12 – 14 months**
- **Administrative route:**                                              **<\$20k**  
**a few weeks**
- **Border enforcement (Customs)**                                      **cheap & fast**

***Cheaper & quicker than EU, UK, USA, Japan***

***Source: Rouse & Co, Shanghai***

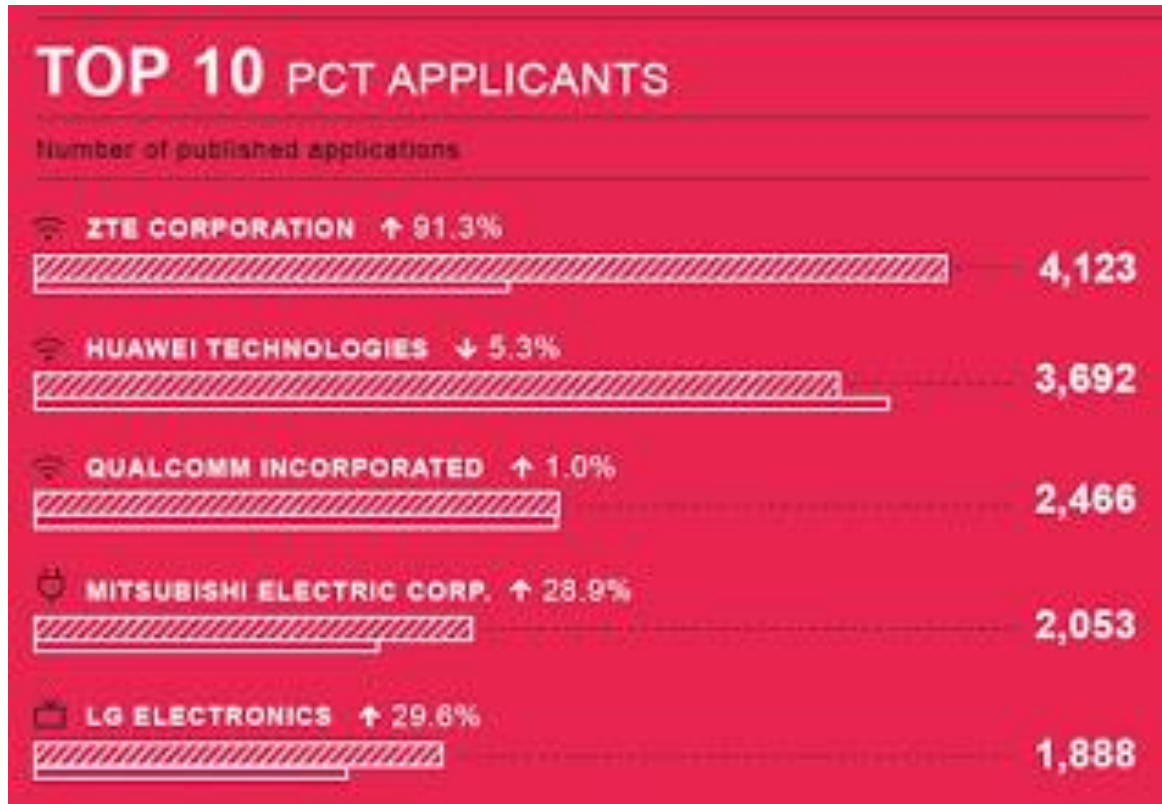
# Domestic & PCT invention\* patents 2016



Sources: SIPO, USPTO, WIPO

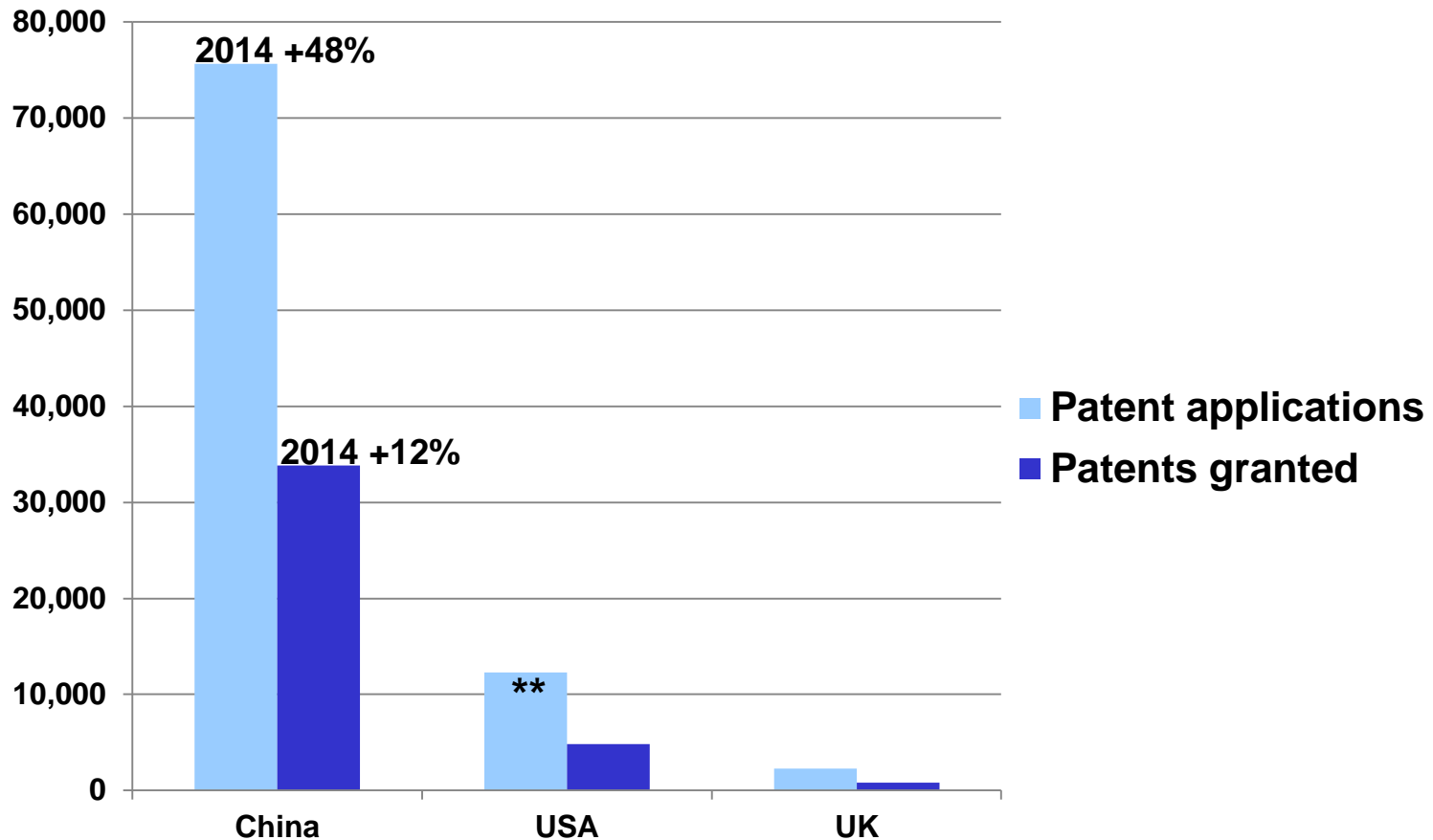
\* In the US "Utility" patents

# Top ten PCT applicants 2016



**Source:** WIPO - [http://www.wipo.int/pressroom/en/articles/2017/article\\_0002.html](http://www.wipo.int/pressroom/en/articles/2017/article_0002.html)

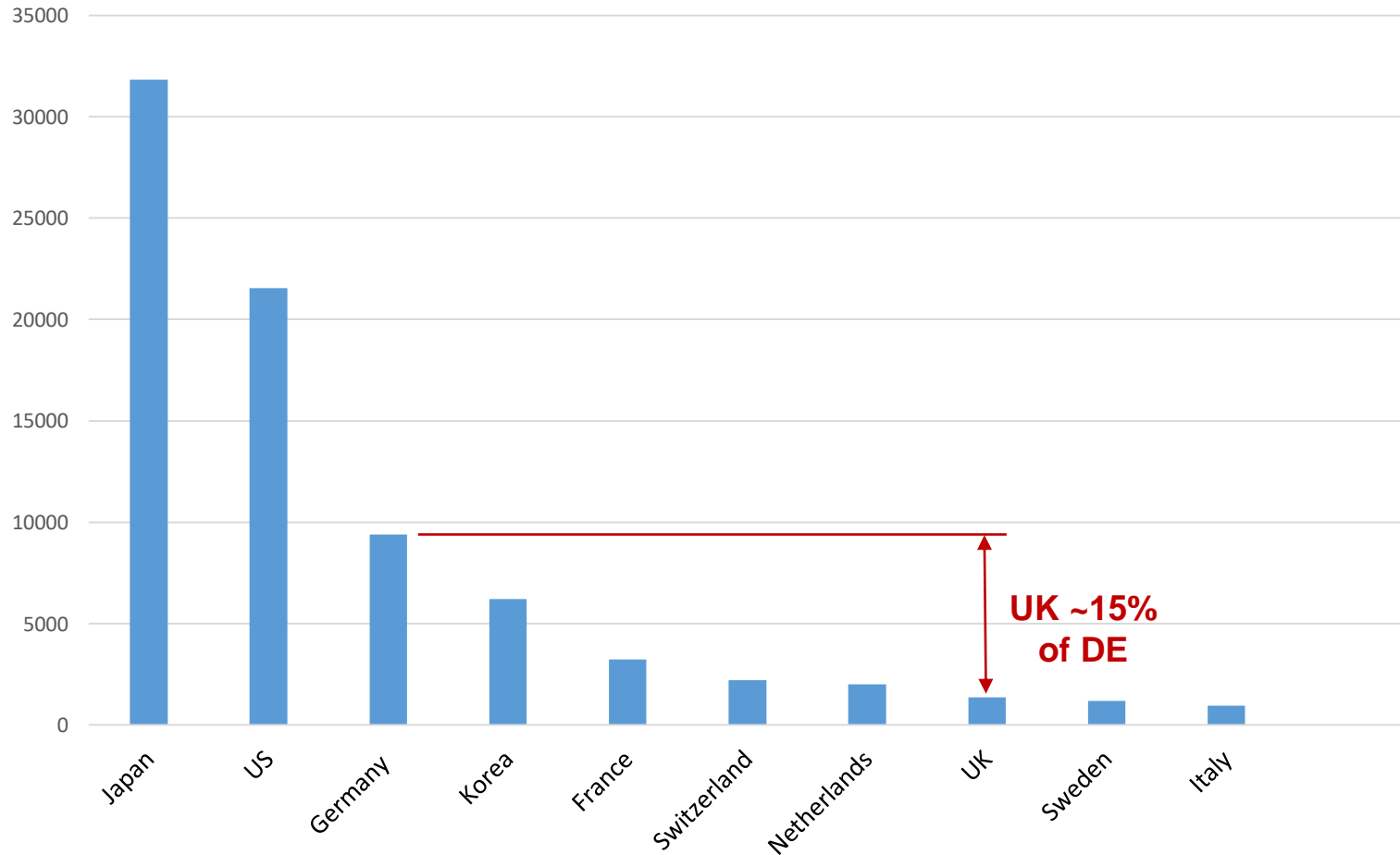
# University invention\* patents 2012/14



Sources: SIPO, AUTM, HEFCE. Excludes other research institutions

\* In the US "Utility" patents \*\* 2010 data

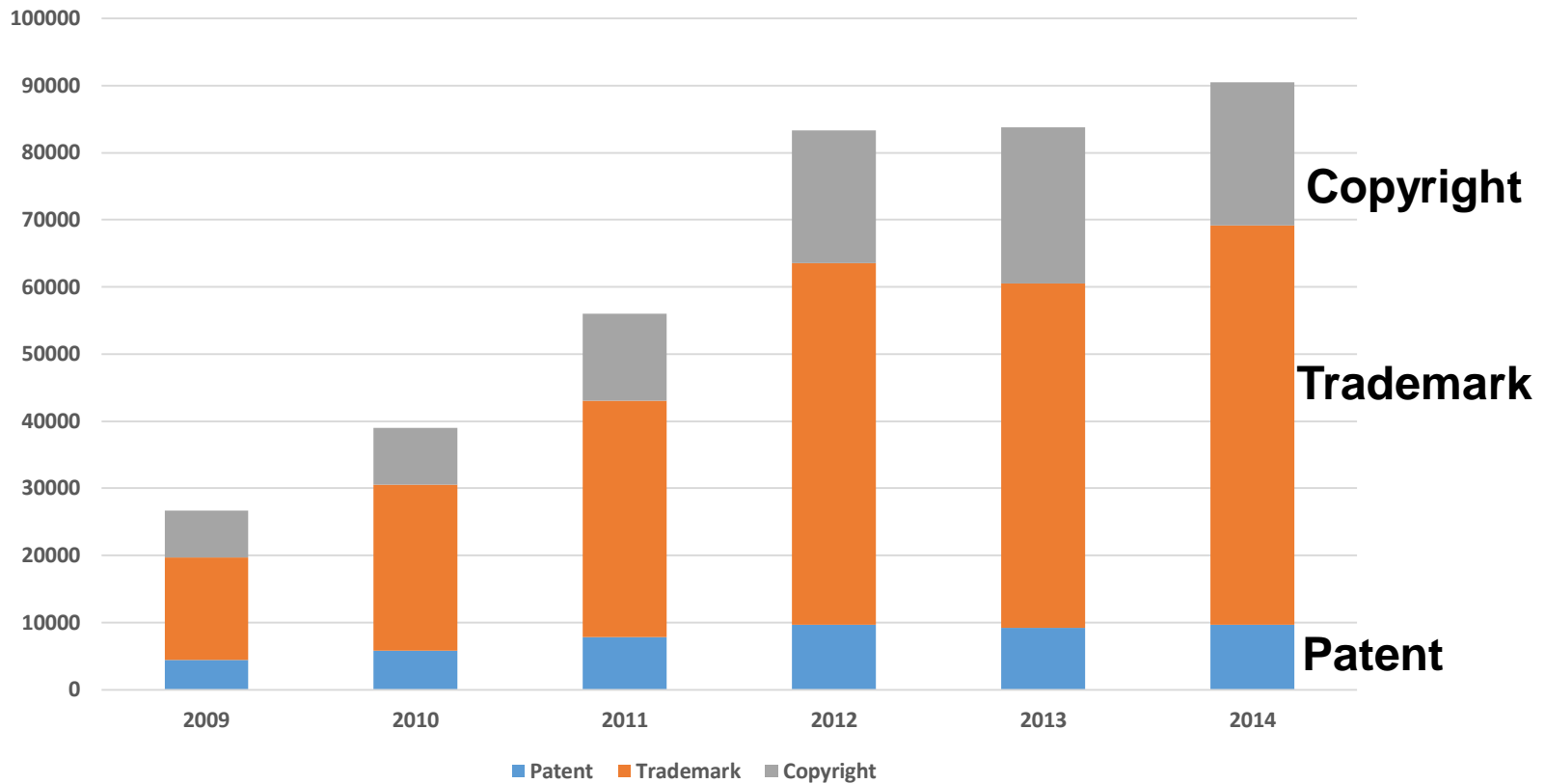
# Top ten countries filing patent\* applications in China 2015



Source: SIPO 2016

\* Invention/US Utility patents

# IP Litigation\* cases in China 2009-2014



***“Most IP-litigious country”***

# China IP Litigation: dominated by Chinese companies

- More patent litigation in China than any other country including the USA
- 98%\* of cases are Chinese vs Chinese company
- Win rate 76%: invention 68%, utility 65%, design 86%
- Of the 2% foreign companies, 90% win their cases
- ***NB: In the USA only ~35% of foreign companies win their court of first instance cases vs ~65% of US companies***

***Foreign companies are 2 – 3 times more likely to win their patent case in China than in the USA***

*\*Excluding cases related to Hong Kong & Macau (111) and Taiwan (58)*

*Sources: Jianyang Yu–Liu (Shen & Associates) 2005; SIPO Report on IP Rights Protection in China in 2004; IH estimates*

# The self-inflicted wounds of foreign companies

- **Not registering rights in China**
- **Little understanding of the market place and legal structures**

# Population Americas + Europe = China



+



=



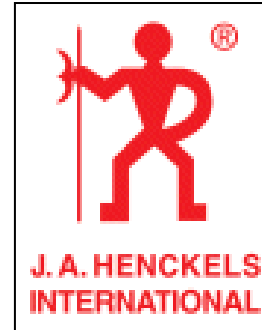
# The self-inflicted wounds of foreign companies

- Not registering rights in China
- Little understanding of the market place and legal structures
- **Limited or non-existent on-the-ground IP expertise**
- **No delegation of authority and too slow**
- **“Afraid to upset the Chinese government”**

# PHILIPS™ IP in China

- 11 research laboratories in China
- 11,000 patents in China *of which 1500 generated in China*
- Profitable business in China
- IP start *in situ* in China in 2001
  - IP creation, counseling, enforcement, licensing, standards
  - 4 Offices, 50 employees - *47 local*
  - IP Academies in 3 universities

# Zwilling J.A. Henckels AG



**Sales: 2005 - €250Mio**

**China: 1990 - 90% of infringement Yangjiang (2000+ cutlery factories)**

**2002/3 - 20 raid actions**

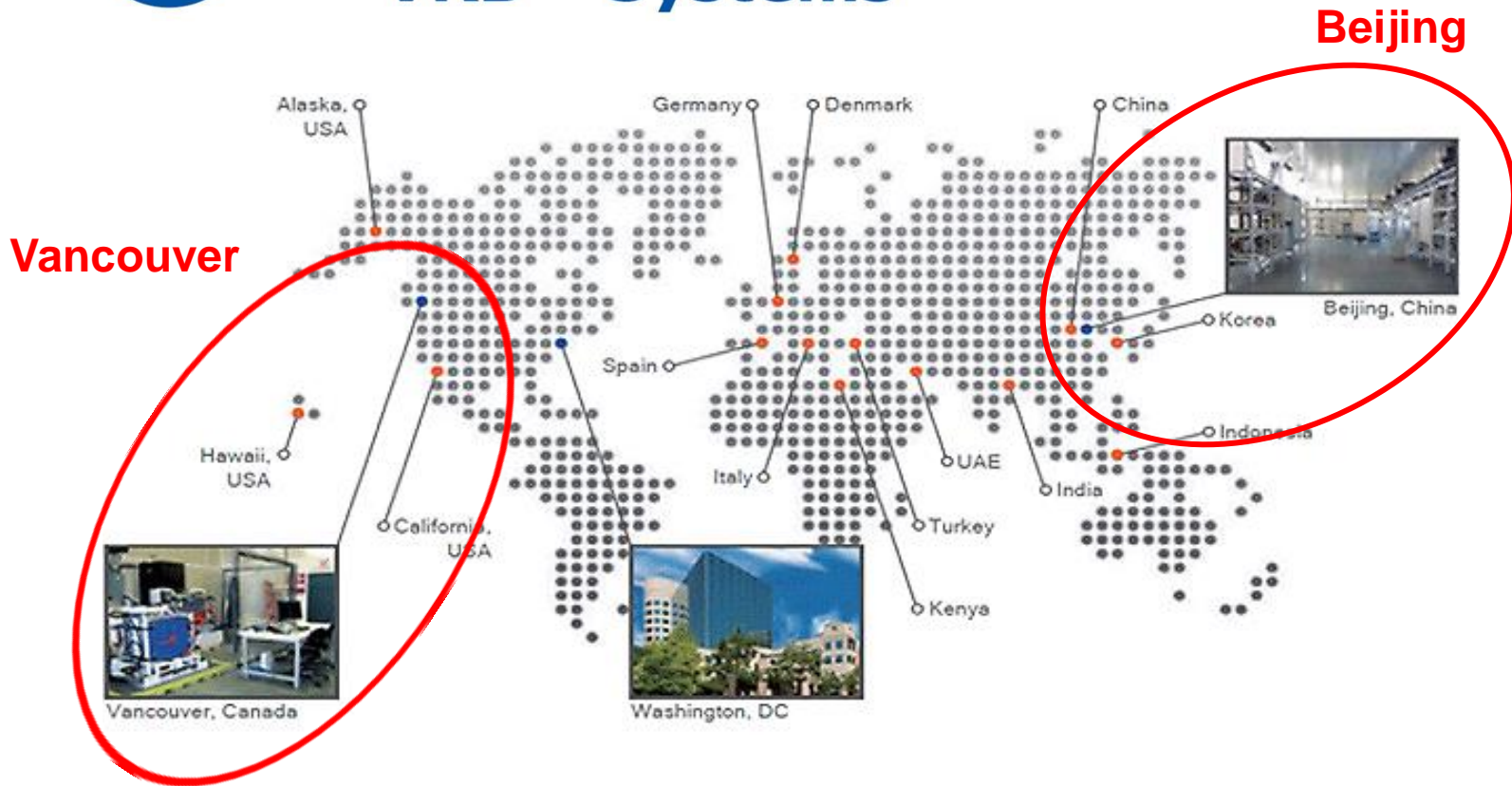
**2004 - no raid actions**

**2005 - 2 factories, 10 distributors, 6 sales offices, 130 POS**

**2016 - profitable business, few or no counterfeits**

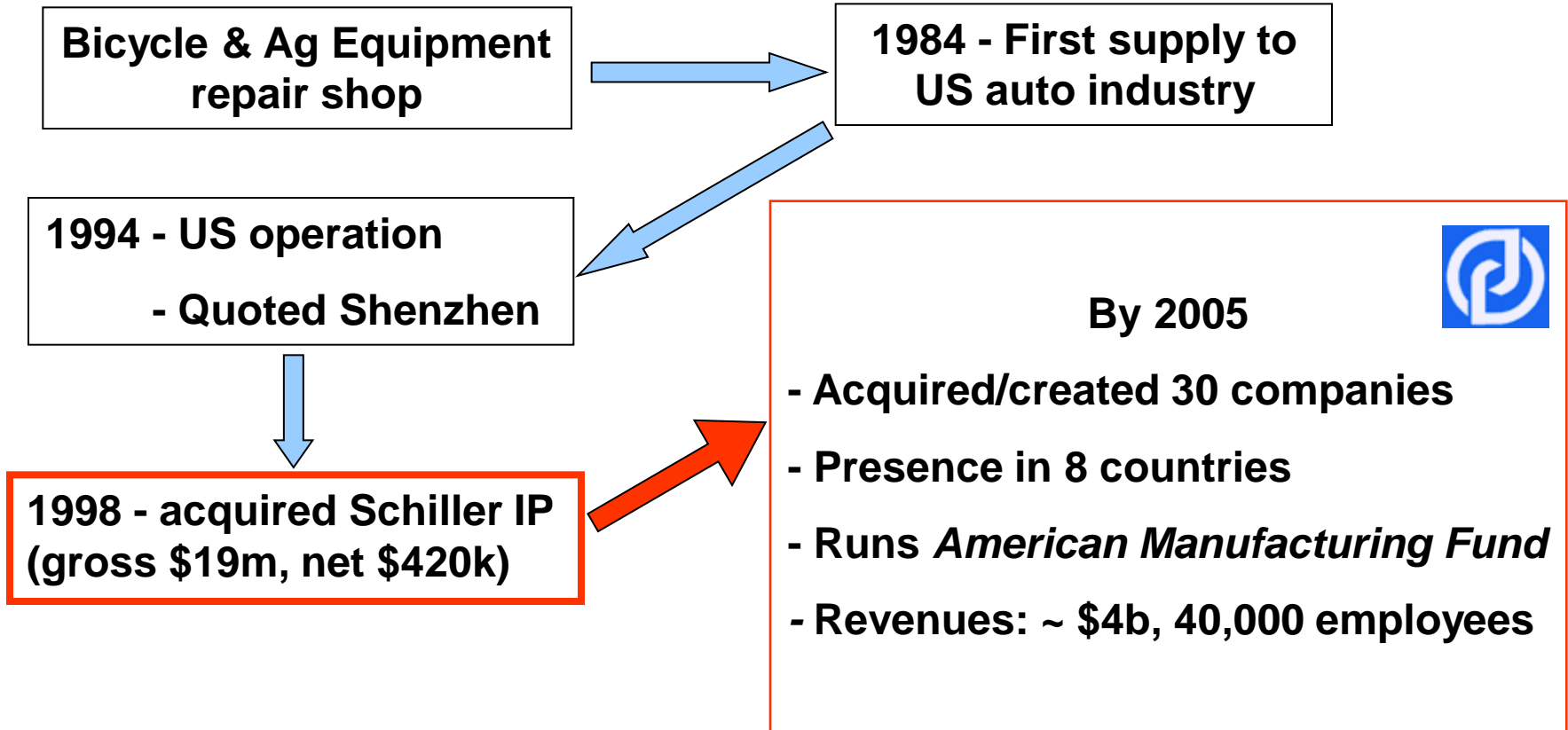
Success → (almost) disaster → success

# Prudent Energy VRB™ Systems





**\$4.5b - Lu Guanqui**  
**2<sup>nd</sup> richest in auto industry**



**Major Tier 1 auto component supplier**

# Lenovo buys IBM's PC business

1. *Transferring brand values*
2. *Creating the world's best PC IP portfolio*





February 2014

MUNICH INNOVATION GROUP IN COOPERATION  
WITH TECHNISCHE UNIVERSITÄT MÜNCHEN



## **77 Chinese companies:**

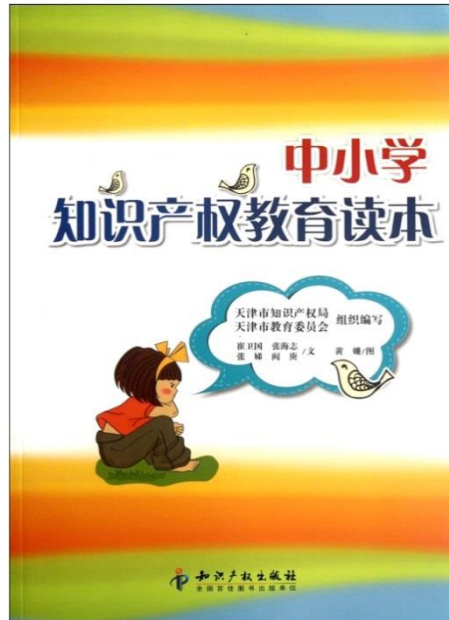
- ***Automotive***
- ***Chemical***
- ***Pharmaceutical***
- ***Electronic***
- ***IT***
- ***Internet***
- ***Engineering***
- ***Solar***
- ***Telecoms***
- ***Oil***
- ***Steel***

***IP Internationalization  
strategies***

# Historical context and comparisons

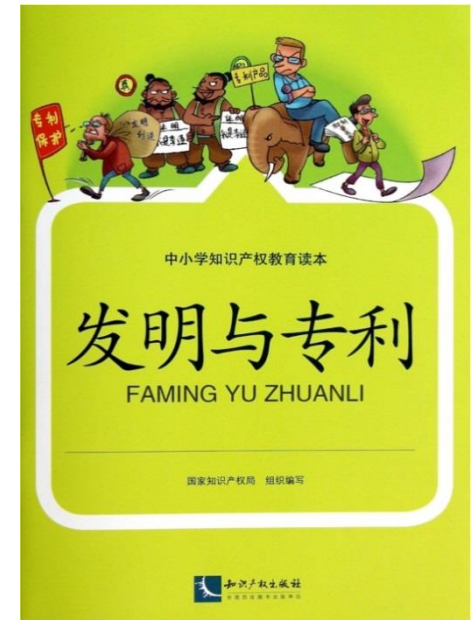
- **Entrepreneurial**
- **Inventive and creative nation – three thousand years**
- **Other countries' evolution:**
  - **Japan**
  - **Taiwan**
  - **Korea**
- ***China evolving faster: 2008 - National IP strategy***
  - ***20 components***

# China School IP Textbooks



Invention and patent - IP textbook for primary and secondary school students

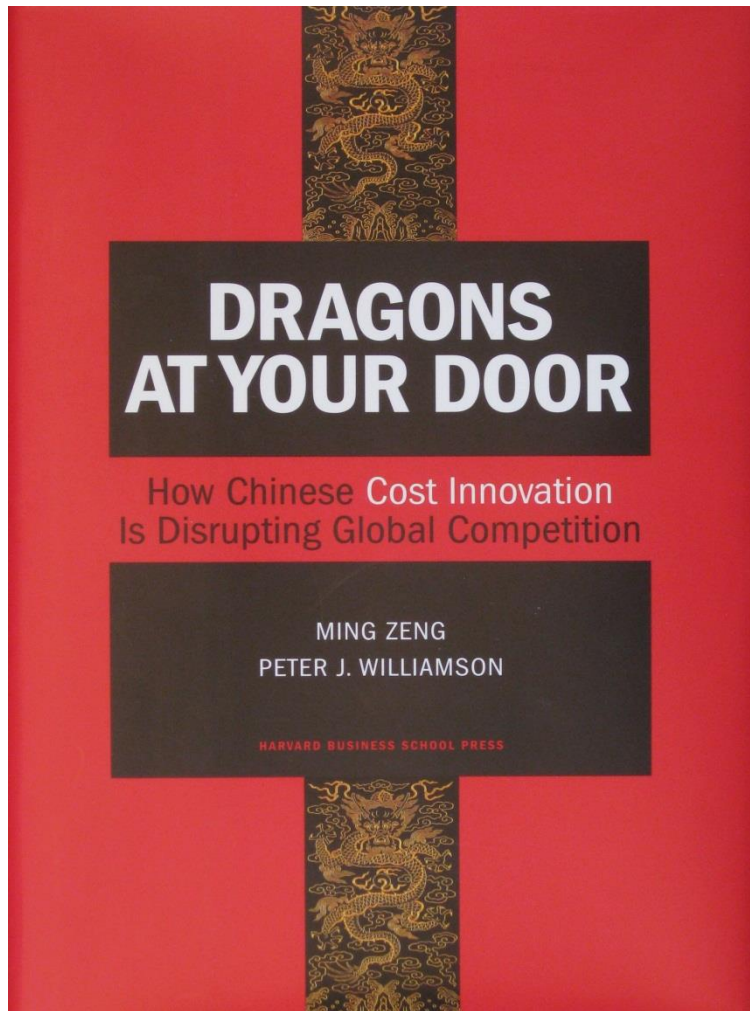
IP textbook for primary and secondary school students by Tianjin Educational Committee – front and back covers.



***“future competition in the world is  
competition in IP....”***

**Wen Jiabao - Chinese Prime Minister  
June 2004 et seq**

# Low Cost Innovation



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