

IP Protection in China and Taiwan



Protection of Intellectual Property Rights (IPR) in China is a big concern for many of our clients, and understandably so. Stories abound of products being copied, and even of factories using the molds that you paid for to make and sell your product behind your back.

That's why at Titoma we go to great lengths to protect the confidentiality of our clients' ideas and inventions. This is actually one of the main reasons people prefer to work with us rather than just handing their idea to an unknown factory somewhere in China.

Patent Protection in China

In China, patents are of very little use because there is still a lack of effective enforcement, even after China joined the WTO. If you win a lawsuit in China, it by no means guarantees that the offending factory is closed down. And if you close down that one factory, they very likely will take their machines down the road and start up again in a new building.

When to patent in your target market (and when not)

An important thing to realize is that most copying originates in the target market. Factory bosses in Ningbo or Wuxi don't keep abreast of what is selling well this month in Dallas, so in most cases it is actually a US importer who asks the China factory to rip off a product he saw in a store. So patenting your idea in your home country and other target markets likely makes more sense. Patenting can be very powerful, and some of our senior engineers have registered and defended many patents themselves in their careers, so you will benefit from our experience. Patrick McGrath, for example, managed to get US\$10M in compensation when one of his patents was infringed upon. (He acted on behalf of his employer, so unfortunately for him it was not take home pay.)

In general we only recommend patenting if you can make a very strong functional claim (what the product does) on the uniqueness of your idea, patents on a design are often all too easy to circumvent. Patents can scare off some potential copycats. On the other hand, registering a patent effectively publicizes lots of detailed information on exactly what your product does and how it does it.

Another important issue is cost. Paying for exhaustive patent searches, registration and maintenance fees is one concern; a second concern is whether you have US\$500K to back up your claims in court against a large corporation.

We have seen quite a few clients who spent so much on patent protection that they had to really struggle to pay for all the other things needed to make an idea into a successful product: development, tooling, the first production batch and proper marketing.

Flooding the market: protection in numbers

The traditional way to market an innovation is to start selling it at a high price, and slowly lower the price to reach more people. The big disadvantage of this strategy is that the high unit price actually provides a big incentive for people to copy it.

Instead, we often advocate selling the new product at low prices right from the start, flooding the market as much as possible and thus preempting the competition before they even have time to do their reverse engineering.

Many good ideas are not easy or affordable to protect, so as soon as your product is out on the market it is liable to be copied, which means that you have to exploit your head start by selling as much product as you can before the competition catches up, sometimes only a few months later. This situation again suggests a mass marketing blitz featuring low prices right from the start. The good thing, of course, is that Titoma allows you to do so with its unique capability to design your product for low cost mass manufacturing in China. But, keeping the project secret during its development is essential.

So how does Titoma protect IPR for its clients?

Non Disclosure Agreement

A basic step in IP protection is to sign a Non Disclosure Agreement (NDA). You can download our form at: www.titoma.com.tw/NDA.doc We sign NDA's with nearly all our clients, strictly enforce them with our personnel, and make sure that if we need to use third party contractors on a project they sign one with us as well.

Product development in Taiwan

Even though most of our mass production is done in China, we still prefer to keep development in Taiwan. Our usual strategy is to do pilot production in Taiwan, and only after the product is stable and available in the market do we move mass production to China. This is generally a very easy transfer because work methods are so similar, and many factories in China are actually Taiwanese managed and owned.

There are a number of reasons to keep design out of China, such as lack of experienced R&D people, but IP protection is the most important one. We are not the only ones with this opinion; HP, Acer and Foxconn (two large Taiwanese electronics firms) recently closed their development labs in China and returned to Taiwan.

Taiwan has made great progress in IP regulation and enforcement in recent years. More important, most Taiwanese firms have been around for 20 years, so they are a lot less likely to just blow up and start anew, unlike China which is still more like the Wild West. Taiwan also has good international law firms that will represent your interests, both in Taiwan and China.

Key Component

We like to design in one critical, hard-to-copy component without which the product won't work, and deliver that component to the factory on a strictly as needed basis. This practice often goes a long way towards preventing more units from being manufactured than you ordered.

Own the full IP

We always pay our manufacturers a realistic fee for tooling and development, this way there is no doubt as to who owns what. Many IP problems we have seen arose when development or tooling were offered free or far below cost, and the client's sales numbers did not meet rosy forecasts. Since the client was not able to sell, the manufacturer feels morally justified in making back his investment by doing the selling himself.

Remove the injection tools

For sensitive projects, we take the plastic injection tools in and out of the molding shop for each run to prevent extra "night shifts".

Divide and Conquer

Another possibility for sensitive projects is to have one factory do the housings, another do the PCB's, and do final assembly with rigid incoming QC in our western-managed assembly plant. This way, none of the subcontractors gets to see the complete picture, so they likely won't even know exactly what their parts are used for. They don't see the packaging, instruction manual, or brand name.

Some of the above tactics are easier to implement than others. It will depend on your product how much protection is needed, and there is of course a trade-off with added coordination costs.

In conclusion

So while at first sight it may look rather scary to take your highly confidential new product idea to Greater China for development, when enough precautions are taken, the advantage of selling the product at low prices and thus high volume right from the start in most cases outweighs the potential added risks of copying.

The alternative, doing development and initial manufacturing in the West, will cost a lot more, will result in a product that will sell slowly because it is expensive, and will attract competition from Asia very quickly, likely before you have even started to make your high investment back.



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