

Lending A Hand To IP Development In China

The Editor interviews Bruce Sales, Managing Partner, China, and Member of the Intellectual Property firm, Lerner, David, Littenberg, Krumholz & Mentlik, LLP.

Editor: Would you tell us about your professional background?

Sales: I am a true patent attorney, meaning that I have a bachelor's and master's degree in science and a law degree. I am admitted to a number of state bars, and I am a registered patent attorney. Although my firm has a long history of working with Asian companies to counsel them about U.S. intellectual property law, over the last five years or so, my firm, and I in particular, have become even more focused on counseling clients in Asia as technology increasingly emanates from Asia and as countries like Japan and Korea have become technology powerhouses. In our opinion, China is following, in its own unique way, much the same route.

Editor: Why did your firm choose to open the office in Guangzhou, which is near Hong Kong?

Sales: Guangzhou is about a two-hour train ride north of Hong Kong. Guangzhou is the capitol of Guangdong Province, which is in the Pearl River Delta area, the heart of the Chinese economic miracle. The Guangdong Intellectual Property Office is by far the busiest provincial intellectual property office in China. Guangdong's trade with the U.S. is larger than that of any other province. Given these factors, it seemed like a good fit for us to offer our pragmatic, business-oriented legal advice, with our exclusive focus on intellectual property, from Guangzhou. We wanted to establish our firm where IP issues and disputes are predominant.

Editor: Most of the American-based law firms in China are large multinational firms. Is the fact that your firm is uniquely skilled in intellectual property matters the reason you have a competitive edge?

Sales: Absolutely. We have more than 60 intellectual property lawyers. IP is all we do, and we are the first intellectual property law firm licensed by the Chinese Ministry of Justice in all of South China. We're pure intellectual property lawyers and licensed patent attorneys with vast experience across the spectrum of intellectual property legal issues – litigation, licensing, due diligence, mergers and acquisitions as well as patent, trademark and copyright procurement. We believe our expertise, our focus on solving problems without litigation, and our personalized approach to client relations will be greatly appreciated in Guangdong and throughout China.

Editor: Will you be able to practice before the courts in collaboration with Chinese lawyers?

Sales: We are not allowed to appear in court under Chinese law, nor would we want to. Principally, we are advising Chinese companies about U.S. intellectual

property law. We have also responded to requests from the Chinese authorities about U.S. intellectual property practice. One of the big differences between us and other U.S. firms in China is that

our principal focus is not on handling legal matters for American companies in China. We will continue to obtain the advice of our Chinese colleagues and use the Chinese law firms that we have historically used for that purpose. Our main mission in China is to help Chinese companies in the U.S. market by enhancing their understanding of the U.S. intellectual property legal world. This provides a synergism with the Chinese government goal of encouraging Chinese technology companies to obtain patent portfolios in the United States. We offer personal face-to-face assistance through our office in China.

Editor: You say you're doing counseling work with the Chinese government, advising them about practices in the U.S. Is that basically your mission there?

Sales: The Chinese authorities and Chinese companies have a keen interest in learning how the United States intellectual property system works on a practical level. They're very knowledgeable in a book-knowledge sense about how our system works, but their knowledge is far more limited in terms of the nuts and bolts – the pragmatics of how issues and strategies unfold from a business standpoint. We believe that the more the Chinese value intellectual property, the better off everyone will be, including the protection of U.S. intellectual property rights in China.

There has been a substantial increase in the consciousness of the Chinese government in IP rights and protecting IP rights. To some degree, the Chinese government gets a bad wrap on this issue. The Chinese situation is so parallel to Japan and Korea, it is really quite striking. As the Chinese have developed technology for themselves and as they have developed homegrown, high-technology industries, there is a very strong interest in protecting those industries in the international marketplace through intellectual property legal protection.

Editor: Will the bulk of your practice be helping Chinese businesses navigate American IP laws and develop strategies for entry into the U.S. market?

Sales: Yes, it will certainly be a sizeable percentage of our practice. We want our clients to be successful, and we can assist by maximizing patent and all IP assets, so that our clients are free to market and sell their products in the U.S. There is a tremendous need and desire among Chinese companies for understanding how intellectual property is utilized in the United States. U.S. companies view intellectual property as an asset that does not sit on the cupboard shelf in case another company comes out with a directly competing product. American



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companies, as well as companies in many other countries, use intellectual property as a means to protect their market share, that is, intellectual property is used as a barrier to market entry. Chinese companies need to understand that if they are going to come into the U.S. high-technology marketplace, they are almost certainly going to be sued for patent infringement sooner or later. Just as other U.S. and internationally based corporations have, Chinese companies must have a plan and a strategy about how they are going to approach and confront intellectual property legal issues. We represent many major multinational corporations, and we can take our expertise and provide our Chinese clients with proven strategies that work in the U.S.

Editor: Will your firm assist IP companies in filing patent and copyright claims in the U.S. as well as international searches to secure their intellectual property rights?

Sales: We will. One of the things that we find ourselves doing is giving Chinese companies our counsel not only with respect to the U.S. intellectual property but with respect to international intellectual property principles and strategies as well. We can provide this guidance based on our extensive experience crafting international intellectual property strategies.

Editor: Is there any other service that you will provide to them other than the advisory services as to how to grow in a given market?

Sales: We pride ourselves in solving our clients' problems so that they can market and sell in the U.S. Often this involves personal meetings with our clients' competitors and our clients' customers. Just as we do with companies in the U.S., we will provide Chinese companies with the entire range of intellectual property skills that we have – due diligence, mergers and acquisitions, procurement, litigation, and licensing. The goal, as for any of our clients, is to position Chinese companies to be able to compete effectively in the U.S. with strong intellectual property portfolios. To accomplish that, we draw on our expertise, and when skills outside intellectual property are needed, we turn to the expertise of our colleagues here in the U.S. and around the world for advice in disparate areas, such as corporate securities, tax and product liability.

Editor: How can a U.S. investor rely on the documentation in financial statements and title opinions accompanying a Chinese company's sale or search for investment dollars?

Sales: There is no substitute for good due diligence. The first and foremost way for investors to be assured is to ensure that the legal team and the business team have checked all the appropriate documents and issues. Having said that, the Chinese system is much better than it used to be. The State Intellectual Property Office, which is the equivalent of the U.S. Patent and Trademark Office, is relatively good in maintaining its records, and they are reasonably reliable. They are certainly

much more reliable than their counterparts in many emerging economies.

Editor: Does the Chinese government encourage its intellectual property companies to expand abroad? How does the government regard sharing its company's intellectual property rights and knowledge with other countries?

Sales: The Chinese government is very actively encouraging Chinese companies to obtain patent portfolios not only within China and within the Asian community, but within the worldwide community with a particular focus on the United States. They are absolutely behind this. It is a goal of the Chinese government to have Chinese companies build strong patent portfolios because without strong patent portfolios, they realize that it is all but impossible to compete in the high-tech, cutting-edge international marketplace. Chinese companies simply must have IP portfolios to enter and maintain a competitive presence in international markets and to participate in standards bodies, which is crucial in the international technology arena, especially in electronic fields. I also believe that the Chinese government and Chinese companies recognize that the protection of intellectual property has been a path that other countries, like Japan and Korea, have followed.

It is a model that is proven to work, and they are keen to follow it.

Editor: On the basis of case law, have the Chinese prosecutions of any patent violations over here been held up?

Sales: In the instances when we have acted for Chinese companies in the U.S., the matters all were resolved short of a formal trial and a formal entry of judgment. I think that Chinese companies have been treated relatively fairly. In any court system there is the issue of regional favoritism or nationalism; it would be naive to think that is not true. So, Chinese companies need to be aware that prejudices may exist, especially in areas of our country that had been really ravaged by the recent economy downturn.

Editor: Do you feel that membership in the WTO has made a difference in the way China wishes to introduce its own intellectual property assets to the rest of the world?

Sales: Yes, I think that it has insofar as membership in the WTO requires that certain minimal intellectual property criteria and laws be established. But I think that it is hard to know which is the cart and which is the horse in terms of the growth of the Chinese economy and the growth of the interest in technology. China joined the WTO because their economy is growing. They foresaw what the future will be, and they understand in part that their future is tied to intellectual property rights, especially on the technology side. I think that entrance into the world economy and technological development go hand-in-hand. I think that China joined the WTO as part and parcel of their moving into the top tier of technology developers in the world.

Please email the interviewee at bsales@ldlkm.com with questions about this interview.