

Winter 2009 Eye on China Newsletter

» 中文版

With unprecedented growth in and influence over the global market — coupled with an ever-evolving legal landscape — China presents as much complexity as opportunity. With internationally recognized IP capabilities and extensive hands-on experience in the Chinese business market, Foley is well positioned to provide legal insight to U.S., Asian, and European companies preparing to do or doing business in China. Moreover, China's fast-growing industries and businesses are seeking to expand their international reach. With more than 160 years of experience, 18 offices in the United States, and a network of international partners, Foley is equally well positioned to assist Chinese companies as they expand globally.

We are pleased to offer Foley Legal News: China Quarterly Newsletter, *Eye on China*, designed to offer companies helpful insight as they successfully navigate China's complex and ever-changing legal and regulatory environment.

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News and Noteworthy

Shanghai Office Awarded Contract From Shenzhen CTU Hi-Tech Ltd.

Foley's Shanghai office has been awarded a two-year contract from Shenzhen CTU Hi-Tech Ltd. (CTU) as a preferred service provider, when all conditions are comparable, qualified to represent CTU in international IP matters. CTU — a Chinese industry association founded in 2007 by China's major home appliance manufacturers — assists its members with general IP matters, including patent licensing, counseling, and dispute resolution. Foley's local partner in China, Scihead Patent Agent Co. Ltd., also was selected by CTU as the preferred domestic IP legal service provider.

Current Topics

East Meets West — Current Topics in the United States

- **Seven Things Chinese Companies Should Consider When Pursuing U.S. Patent Protection**, by *Marshall J. Brown, Foley & Lardner LLP*

Despite several attempts to harmonize U.S. patent laws with the laws of other countries, U.S. patent laws are still unique in several important areas. This article discusses a number of these areas as well as the potential risks and benefits associated with these idiosyncrasies. View full article: http://www.foley.com/publications/pub_detail.aspx?pubid=6647

- **The Intersection Between Patent Rights and Industry Standards**, by *Alex Liang, Foley & Lardner LLP*

Chinese companies that participate in organizations that set industry standards may gain market share. However, companies should be keenly aware of the legal issues and implications relating to intellectual property rights and industry standards. View full article: http://www.foley.com/publications/pub_detail.aspx?pubid=6646

- **U.S. District Court Forums for Patent Litigation: How Plaintiffs Choose and Defendants Move (Part 1 of 2)**, by *Mary Calkins, Foley & Lardner LLP*

Most U.S. patent actions take place in one of the many U.S. (or federal) district courts. Every state has at least one district court, and many have more than one. Understanding the advantages and disadvantages of particular district courts and how to potentially

transfer a case or party from one court to another are important strategic aspects of patent litigation. This article provides a brief overview of how plaintiffs select a district court in which to bring a patent action. View full article:

http://www.foley.com/publications/pub_detail.aspx?pubid=6649

West Meets East — Current Topics in China

■ **China: Trademark Coexistence Practice**, by Jo Xu, Foley & Lardner LLP

Although not explicitly recognized in the trademark law in China, a recent case proves that a trademark coexistence agreement can be enforced in practice. This article examines the situations in which a trademark coexistence agreement is effective, and provides tips on how to register a trademark despite the existence of a senior similar trademark when such an agreement has been obtained. View full article: http://www.foley.com/publications/pub_detail.aspx?pubid=6651

■ **Evolving Convergence: Antitrust/Competition Law and Policy/Procedure in the United States, European Union, and China**, by Howard W. Fogt Jr., Alan Rutenberg, Max Lin, and Jo Xu, Foley & Lardner LLP

Antitrust/competition laws in the United States and European Union have been operating for more than 100 years and have served as models for other laws, including the more recently enacted laws and regulations in China. China recently enacted a comprehensive set of anti-monopoly laws and procedures and reorganized its enforcement structure. As more and more countries move toward market-based economies and away from centrally planned economies, more competition laws are being enacted.

View full article: http://www.foley.com/publications/pub_detail.aspx?pubid=6653

■ **Recent Interpretations and Guidance Concerning Court-Connected Mediation as a Form of Alternative Dispute Resolution in China**, by Adria Warren, Foley & Lardner LLP

With China's vast legal system often overwhelmed and under-funded, Chinese courts have increasingly indicated their commitment to normalizing alternative dispute mechanisms, in particular by expanding access to, and institutionalization of, court-connected mediation as a form of alternative dispute resolution in China. "Judicial mediation" as practiced in China differs from U.S. mediation models because of its court focus, and is best thought of as comparable to U.S. settlement conferences. View full article:

http://www.foley.com/publications/pub_detail.aspx?pubid=6655

Staying Connected

Please Join Us — Future Events

Foley's Global Marketplace: Eye on China Series programs are designed to offer companies helpful insight as they successfully navigate China's complex and ever-changing legal and regulatory environment. Upcoming events include:

■ **Eye on China: Roundtable Series**, *Protecting Your Innovation in China*

For companies looking to locate new business or currently doing business in China, or seeking to procure IP rights for enforcement in China, the recent implementation of the Third Amendment to China's patent law will have a significant — and positive — impact on their ability to successfully manage and enforce IP rights in China. This roundtable will explore how companies can procure and enforce IP under China's amended IP laws.

Where: Silicon Valley, California

When: Thursday, December 10, 2009, 8:00 a.m. – 11:00 a.m. Pacific

Register Today: http://www.foley.com/news/event_detail.aspx?eventid=3110

■ **Eye on China: Seminar Series**, *Navigating the U.S. Patent Litigation Landscape*

This seminar will address issues of interest to Chinese companies currently doing business in the United States or looking to expand to U.S. markets. The seminar will focus on the latest key developments in U.S. patent law, including examination of landmark cases. Panelists also will discuss effective strategies for patent prosecution and litigation matters.

Where: Shanghai, China

When: March 2010

In Case You Missed It — Recent Events and Activities

■ **Eye on China: Web Series**, *Integrating IP and Business in the Face of China's Patent Law Changes*

As companies eye opportunities to invest in and locate new business, technology, and cutting-edge R&D in China, the implementation of the Third Amendment to China's patent law will have a significant impact on their business transactions and IP portfolio management. On September 24, 2009, Foley hosted a Web conference addressing how companies can successfully implement and integrate IP and business strategies in light of the changes brought about by the Third Amendment.

View the event materials at http://www.foley.com/news/event_detail.aspx?eventid=2946.

- **Eye on China: Roundtable Series, *Turning the Corner? Protecting Innovation and Investment in China's Rapidly Evolving Business Landscape***
On October 22, 2009 in Milwaukee and on October 27, 2009 in Chicago, Foley hosted roundtables discussing how international companies investing in and locating new business, technology, and cutting-edge R&D in China can benefit from China's strengthened IP laws — as well as changes in tax and business regulations — to harness, protect, and grow their business assets in China.
View the Milwaukee event materials at http://www.foley.com/news/event_detail.aspx?eventid=3031.
View the Chicago event materials at http://www.foley.com/news/event_detail.aspx?eventid=3032.
- **Eye on China: Seminar Series, *Navigating the U.S. Patent Litigation Landscape***
On November 17, 2009, Foley hosted a seminar in Shenzhen, China exploring issues of interest to Chinese companies currently doing business in the United States or looking to expand to U.S. markets. The program focused on the latest key developments in U.S. patent litigation, the impact of pending patent reform legislation, and the role of reexamination in litigation. Foley's patent litigators also provided an overview of U.S. patent litigation, patent infringement damages, and the current debate over the *Bilski* standard for patentable subject matter and its impact on the enforcement of software and business method patents. View the event materials at http://www.foley.com/news/event_detail.aspx?eventid=3098.
- **Eye on China: Roundtable Series, *Stop Copyists From Undercutting Your Innovation***
In today's global business markets, where ideas and information can be transmitted across the world in mere seconds, it is more critical than ever for companies to develop proactive strategies to prevent copyists and low-price competition from undercutting their innovation. On December 8, 2009, Foley hosted a roundtable in San Diego, California exploring how companies can create and implement effective strategies for protecting themselves against IP infringement when doing business in China. View the event materials at http://www.foley.com/news/event_detail.aspx?eventid=3108.

Legal News: China Quarterly Newsletter, *Eye on China* is part of our ongoing commitment to providing legal insight to our clients and our colleagues preparing to do or doing business in China. If you have any questions about this publication or would like to discuss the topics presented here, please contact your Foley attorney or the following:

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ABOUT FOLEY

Foley & Lardner LLP continually evolves to meet the changing legal needs of our clients. Our team-based approach, proprietary client service technology, and practice depth enhance client relationships while seeing clients through their most complex legal challenges. In a recent survey of *Fortune* 1000 corporate counsel, conducted by The BTI Consulting Group (Wellesley, Massachusetts), Foley ranked first for superior client service and value. We also were named to the *InformationWeek* 500 list for four consecutive years for our client-focused technology. Whether in the United States or around the world, Foley strives to provide high-caliber business and legal insight.

Foley & Lardner LLP Legal News is intended to provide information (not advice) about important new legislation or legal developments. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments.

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