



## Motor & Equipment Manufacturers Association

*The Voice of the Motor Vehicle Supplier Industry*

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November 4, 2011

David J. Kappos  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office  
Department of Commerce  
600 Dulany Street  
Alexandria, VA 22314

**RE: Request for Comments on Intellectual Property Enforcement in China  
[Docket No. PTO-C-2011-0056]**

Dear Mr. Kappos:

The Motor & Equipment Manufacturers Association (MEMA) represents over 700 companies that manufacture and remanufacture motor vehicle parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. Motor vehicle parts manufacturers are the nation's largest manufacturing sector, directly employing over 685,000 American workers.<sup>1</sup>

### Introduction

Given the growing economic relations between the U.S. and China – the world's two largest economies – it is imperative that intellectual property (IP) enforcement in China meets a standard that allows American companies and American innovation to remain competitive. The motor vehicle parts supplier industry is responsible for nearly 40 percent of the U.S. automotive research and development and is responsible for two-thirds of the value of a new vehicle. Much of the intellectual capital required for the design, testing and engineering of new parts and systems for motor vehicles comes from suppliers.

China's growing domestic market will play a crucial role in our industry's future growth, but only if American companies have confidence that China's patent system is fair and efficient. China's role in the global economy demands such a system and the U.S. government must work with China, in the context of economic cooperation, to achieve this goal.

### Acquisition and Enforcement of Utility Model and Design Patents

The ease of obtaining utility model and design patents can hurt foreign IP owners. Utility model and design patents are obtained in China with no substantive examination prior to the patents being granted. Additionally, these patents can be obtained in approximately 12 to 18 months, compared to the timeframe of about five years that it takes to receive a standard patent in China.

Foreign IP owners must adopt an aggressive and extensive China patenting model. Motor vehicle parts manufacturers have faced efforts by Chinese violators to register the foreign firm's inventions and designs in China, which gives the violator a market advantage. Though foreign IP owners can seek invalidation of these registrations through the China Patent Office, the timeframe to reach resolution of such cases takes six to 12 months, which provides the registrant a tactical advantage.

MEMA encourages the U.S. Patent and Trademark Office (U.S. PTO) to seek clarification that if copyright continues to subsist in a design or artistic work, that it is industrially applied. Chinese law is currently unclear on this point.

<sup>1</sup> MEMA represents its members through four affiliate associations: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA). Suppliers manufacture and remanufacture the parts and technology used in the domestic production of millions of new cars and trucks produced each year, as well as the aftermarket products necessary to repair and maintain vehicles on the road today.



Automotive Aftermarket  
Suppliers Association



Heavy Duty  
Manufacturers Association



Motor & Equipment  
Remanufacturers Association



Original Equipment  
Suppliers Association

## **Evidence Collection and Preservation in Chinese Courts**

Evidence collection in China has become more difficult for IP owners. Infringers are using more secretive locations for infringing activities and retaining small amounts of product at these locations to minimize fines or damages resulting from raids.

Chinese courts have proved challenging for motor vehicle parts suppliers. The courts seem reluctant to accept evidence other than that which is notarized, which can be difficult to arrange. In addition, evidence submissions are often dismissed without reasoning other than being "unreliable." MEMA encourages the U.S. PTO to request that Chinese courts rely on clear standards and guidelines in making decisions.

## **Obtaining Damages and Injunctions**

Though preliminary injunctions like preservation orders are possible in China, the courts often refuse to issue such orders favoring instead a full hearing in which the court reviews all relevant evidence. This lengthy and academic process is typical of Chinese courts and inhibits aggressive patent protection which often relies on quick court orders.

As a result, IP owners are forced to carry out raids through the Patent Bureaus to obtain quasi-preliminary injunctions followed by seeking damages and formal court-issued injunctions; a costly process for foreign IP owners. MEMA encourages the U.S. PTO to seek improvements in this process.

## **Enforceability of Court Orders**

In many cases, infringers refuse to acknowledge court orders made against them unless visited by court bailiffs reminding them of the importance of complying with the orders. This is particularly problematic when damages have been awarded. The Chinese government must seek ways to elevate respect for their judiciary. Until the Chinese courts are respected, infringers will continue to ignore court awards and orders.

## **Administrative Patent Enforcement**

China set up an extensive administrative patent enforcement system many years ago in response to high levels of IP violations. The experience with this system by motor vehicle parts manufacturers has been generally positive. The patent bureaus tend to act sensibly and quickly, and in the most serious cases, aggressively. One fault with Chinese patent enforcement is that it allows Chinese pirates to use the system against rightful patent owners. Patent bureaus must be able to make a preliminary determination as to the rightful ownership of the patent rights that they are asked to enforce. This would be particularly helpful with utility model patents and design patents, which can be obtained by anyone for old technology, designs, etc., without any substantive examination by the Chinese Patent Office.

## **Conclusion**

MEMA supports efforts by the U.S. PTO and the other Federal agencies to better understand the challenges with China's patent enforcement system and urges the government to press China to make necessary improvements that allow for fair competition. For more information, please contact Dan Houton, MEMA Director of Government Relations at 202-312-9250 or [dhouton@mema.org](mailto:dhouton@mema.org).

Sincerely,



Ann Wilson  
Senior Vice President, Government Affairs