

IP OPPORTUNITIES ABOUND IN THE SILICON VALLEY OF CHINA

► **A firm known for its focus on intellectual property looks to China and other key Asian markets to expand its client base.**

CCBJ: Fish opened a representative office in Shenzhen, China, in January 2019. Why is having an office in this region important to the firm?

Carl Bruce: China is, and will continue to be, a critical market for innovation. Fish represents many of the top 25 global tech companies by market cap, and expanding into Shenzhen, the “Silicon Valley” of China, makes good business sense. Since our focus is intellectual property (IP) – we do more of it than anyone else, and we do it better – we wanted to be where some of the leading innovation is taking place. In November 2018, *Forbes China* put Shenzhen first on its list of the “Top 30

Most Innovative Chinese Cities.” Shenzhen boasts the highest number of Patent Cooperation Treaty (PCT) applications filed of any city in China. The city is home to some of China’s most innovative companies, which account for almost 50 percent of Chinese PCT filings. We believe it is critical to be able to work with these companies and to meet their needs on the ground, in real time, whenever they need us. In short, it helps us serve them at the highest levels.

Other firms have opened their offices in Beijing, Shanghai or Hong Kong. While being in these financial and governmental centers makes sense for firms with corporate, tax, M&A, and similar practices, Shenzhen is a much better fit for us.

Another region in China that is strategically important to us is Hangzhou, home to our client Ant Financial and

its sister company Alibaba. In addition to opening our Shenzhen representative office, we have been working diligently to support our clients in Hangzhou and to build additional relationships there. As part of that effort, we forged a partnership with Zhejiang Hangzhou Future SCI-TECH City (STC), a government-funded incubator in Hangzhou. We can use STC’s offices to meet with clients and potential clients, so we’re excited to have this resource as well.

You have handled patent infringement litigation in U.S. district courts for a well-known Chinese conglomerate. How did you get started working with Asian companies and how has your practice grown since?

One of my partners has a close relationship with an in-house attorney



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at a very large Chinese company. The company had a high-stakes patent litigation matter in the U.S. several years ago and was looking for the best litigation counsel to handle it. The company was familiar with Fish's reputation and winning track record in IP trials, and hired us for that first case. The client was very pleased with the service and the results we delivered, and the relationship has grown from there. We have built our client base in China by continuing to focus on developing such close personal relationships. These partnerships help us better understand our clients' business and goals, and enable us to provide services that take into account those business realities and goals.

How has patent litigation in this area changed over the years? What litigation trends are you seeing for Asian companies?

There are a large number of strongly innovative companies throughout Asia, particularly in China, Korea and Japan. These companies have made significant investments in research and development activities, often hundreds of millions of dollars if not billions of dollars. They understandably want to protect their proprietary technologies, and they want the best firms to do so. They also become advocates with their respective governments to strengthen their own countries' patent protections. This has led to substantial increases in the number of patents filed in Asia. In 2017, patent filings in Asia rose to more than 65 percent of all applications filed worldwide, increasing from less than 50 percent of all patent filings in 2007. This growth has mostly been driven by patent filings in China.

As such, we are beginning to see these compa-

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nies seek to enforce their patent rights here in the U.S. and throughout the world. For example, there have been a number of Asian companies that have used the International Trade Commission (ITC) to seek exclusion orders barring importation of products that infringe on their patents. This is particularly notable since one of the ITC requirements is that in order for a company to proceed with an action in the ITC, they have to not only have a patent they want to enforce but they must also have significant capital, plant or equipment, personnel, R&D, or licensing investment in the U.S.

For most of our Asian clients, we often have to evaluate the implications of patent litigation, both enforcement and defense,

in multiple jurisdictions, including in the U.S., Europe, China, Japan and Korea.

Fish has a prominent practice in Taiwan and South Korea, working with industry titans like Samsung and LG. Tell us about the firm's work for companies in this region and some of its more recent successes.

Fish is a powerhouse IP litigation firm for top South Korean and Taiwanese companies, representing companies most involved in U.S. disputes. We work with leading technology companies for litigation and patent prosecution matters, in technologies ranging from mobile handsets to displays to biosimilars.



Last year, Fish won one of the first U.S. cases to be filed under the Biologics Price Competition and Innovation Act, which provides an abbreviated pathway for FDA approval of biosimilar products. The case involved the drug Renflexis®, our client's Samsung Bioepis's biosimilar of the rheumatoid arthritis drug Remicade®, which has \$5 billion in annual U.S. sales. The win allowed Samsung Bioepis to fully launch Renflexis in the U.S.

Also last year, Fish won a big case at the ITC for Taiwan-based client Macronix International, a leading manufacturer of non-volatile memory, against Toshiba Corp. and its subsidiaries.

We obtained a rare reversal of an administrative law judge's initial determination of no violation, and secured an exclusion order. The case made new law relaxing the domestic industry requirement.

Since 2013, you've been a member of the IPO Asian Practice Committee and have participated in three of its Asia fact-finding trips. How has that helped you better represent your clients?

Those trips gave me an opportunity to see firsthand how the law relates to IP issues developing in the countries we visit. We typically visit the local patent offices, IP courts and patent associations to

discuss IP issues at practical and policy levels. That information helps me understand the legal realities that clients in those jurisdictions have to deal with. It is also useful for U.S. clients who have businesses in those jurisdictions and need to make strategic and legal decisions regarding their operations.

What IP issues keep your Chinese clients up at night and what advice do you give them?

Companies typically work best when there is global certainty and stability on the business and legal landscapes. Unfortunately, right now, there is very little of either. We keep our clients apprised of any develop-

ments that may affect them, on the legal, legislative and business fronts. We also work with our clients to develop strategies that provide flexibility, which is critically important in the rapidly changing business and legal environment.

Are there any other hot issues on the horizon that you are tracking?

We are definitely watching the current trade war and its effects on the legal landscape. As part of my involvement in the IPO Asian Practice Committee, we are looking at China's Draft Foreign Investment Law and the Proposed Draft Amendments to China's Patent Examination Guidelines. ■