

Patents, Politics and Products: Considering Chinese-Owned Australian Patents

Dr Ian Maxwell

PATENTS, POLITICS AND PRODUCTS: CONSIDERING CHINESE-OWNED AUSTRALIAN PATENTS

Patents, or holding the intellectual property rights to an invention, can be of great importance to a company, as they allow them to sell their product in a specific market with reduced competition. **Dr Ian Maxwell** has recently considered the patents filed by Chinese entities in Australia, looking in particular at the recent growth in the number of these patents being filed. He considers the interplay between patents and political rulings and provides several insightful statistics about these Chinese-owned Australian patents.

Filing Patents Around the World

Patents may be granted by a patent office to someone who comes up with a new invention and applies for a patent. It gives them certain rights for a period of time, for example, to stop others from making or selling their products similar to their invention. Patents vary from country to country, and they are territorial – for example, if I have a UK patent, I only have the rights associated with it in the UK market. As a result, companies will often hold patents in multiple countries where they have a market for their products.

Dr Ian Maxwell has reviewed which entities from other countries hold patents in Australia, in particular, looking at the growth in the rate of Chinese-owned Australian patents. He has reviewed information from the global patent databases, looking for inventions initially filed in China – usually a strong indication that it was invented within a Chinese entity – between 2010 and 2020.

From this data, Dr Maxwell found that there has been swift growth in the number of patents from China being filed in Australia

– for example, in 2018, there were 975 Chinese-owned Australian standard patents filed in Australia, but by 2019 this had almost doubled to 1800. However, not all of the companies that have originally filed for these patents may have an interest in selling their products in Australia; some may have been filed to achieve certain tax benefits in China, for example.

How Patents and Politics Interact

From this, Dr Maxwell went on to look at the Chinese entities that have the most Australian patent rights. Huawei Technologies, a telecommunications company, holds the largest number of Australian patents by far – between 2010 and 2020, they accumulated 375 granted Australian patents. By comparison, a Chinese mining institute holding the second-highest number of Australian patents had 213 Australian patents.

A number of Huawei's patents relate to their 5G technology, but this, in turn, creates potential issues. The Australian Federal Government has banned Huawei from selling 5G equipment in Australia due to potential national security risks.

Dr Maxwell notes how, despite this, the Australian patent office – which is a part of the federal government – has granted patent rights surrounding 5G technology to Huawei.

Dr Maxwell points out how this discord could cause a range of possible scenarios for Huawei and the Australian markets. Owning a patent means that you have the legal right to stop others from making or selling a product incorporating the patented invention without your permission. For example, if another company comes along wishing to sell alternative 5G technologies on the Australian market, could Huawei enforce its patent rights and stop them from doing so?

If this is the case, Australia could potentially be left without access to critical 5G technologies unless the courts step in. They could potentially grant a compulsory “crown” license, which is a license where intellectual property rights, like those in a patent, can be granted to a third party by an authority body. However, there is no precedent for such matters in a case such



as this. Ultimately, it all comes down to the quality of Huawei's inventions: if their competitors don't end up infringing Huawei's patents, the question must be asked as to why Huawei bothered patenting them in the first place.

Who Is Filing These Patents, and What Are They Protecting?

Dr Maxwell also explored who the patent attorneys are for the Chinese companies looking to gain Australian patents. Patent attorneys are legal professionals who usually work for an agency or legal firm and guide clients through the process of filing for a patent, as well as helping them to act if someone else infringes the rights laid out in their patent.

Whilst there are several such firms that are all owned by a single intellectual property group – including the firm that files the largest number of Chinese-owned Australian patents on behalf of their clients (and which is also the firm responsible for the Huawei patents) – there is another aspect of these findings that surprises Dr Maxwell. There is a patent agent on the list, responsible for around 30% of Chinese innovation patents filed in Australia in Dr Maxwell's dataset. However, this agent is not registered as a Trans-Tasman Patent Attorney, so it is not registered with the regulatory board for Australian patent attorneys, and only files innovation patents.

Standard patents are usually filed for wholly new, original inventions, whereas innovation patents (now defunct as of 2021) were filed for lesser inventions (known as innovations) and were much easier and cheaper to obtain. As Dr Maxwell notes, the

Australian Innovation patent was relatively cheap to obtain compared to other regions. This leads Dr Maxwell to suggest that there may have been some tax benefits or incentives for Chinese entities to file foreign patents, and this may have been responsible for the recent growth seen in Chinese-owned Australian innovation patents.

Out of all these patents, Dr Maxwell looked at what categories of products these patents fall into. He found that there is a remarkably even spread between all categories, from agriculture and foodstuffs through to electrical and communication technology. This shows us that there is a spread in the research and development being carried out in China, and a spread in the patents that their entities are filing as a result. Overall, there is a large growth in the rate of Chinese-owned Australian patent rights. Very soon, Chinese entities may collectively be the largest set of foreign owners of Australian patent rights. This trend is in line with global trends.

Finally, there is no evidence of patent enforcement by Chinese owners of Australian patents. That is, all of the Chinese entities filing for patent rights in Australia are doing so at significant cost, without the concomitant financial benefits that flow from the willingness to enforce these patent rights in the courts. This highlights a bigger issue that Chinese entities may have with respect to their traditional attitudes towards intellectual property rights. Without a shift in these attitudes, it will be difficult for Chinese entities to compete in the long run within innovative global business sectors.



Meet the Researcher

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Dr Ian Maxwell studied for both his BSc and PhD at the University of Sydney, focusing on polymers, surface chemistry and reactive systems. Following this, Dr Maxwell worked on university research in Australia and the Netherlands and founded the Key Centre for Polymer Colloids at the University of Sydney in 1991. He then took on the roles of Chief Chemist and Head of Technology at Memtec Ltd, followed by a role as the Director of Corporate Research and Development for the James Hardie corporation. After this, Dr Maxwell has worked as a partner for various venture capital funds, has founded or co-founded over ten companies focusing on a range of different technologies and in 2012, he founded Australia's first patent brokerage. Dr Maxwell is listed as an inventor on over seventy-five patent families, ranging from social media to building materials. His work has been recognised through his receipt of medals from the Royal Australian Chemical Institute and the UK's Royal Society of Chemistry. He is also a Visiting Professor at the Faculty of Engineering at IT at the University of Technology, Sydney, where he performs research in the area of patent analytics.

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FURTHER READING

IA Maxwell, NJL Maxwell, [A Review of Chinese-Owned Australian Patents](#), World Patent Information, 2022, 71, 102151. DOI: <https://doi.org/10.1016/j.wpi.2022.102151>

