



FICPI SEMINAR SERIES

New developments for IP practitioners

Singapore, 22 November 2019

FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN



ACTING FOR THE IP PROFESSION WORLD WIDE



Session 6: Governmental Strategies for Promoting Innovation and IP Protection

Moderator

Uwe R. Borchert
FICPI - CET Reporter General



Session 6: Governmental Strategies for Promoting Innovation and IP Protection: China

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Lena (Lanying) Shen began her career in the intellectual property field in 2000. She currently serves as a partner of Beijing Sanyou Intellectual Property Agency Ltd., a top and renowned Chinese intellectual property law firm and is the manager of its Trademark Department.

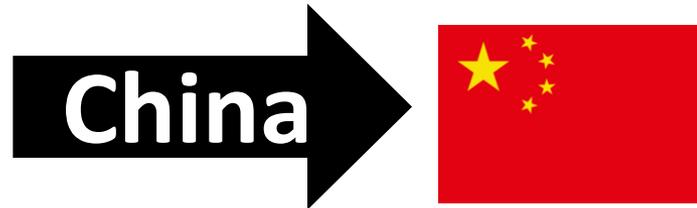
Lena specializes in intellectual property, including trademark enforcement, trademark prosecution, patent litigation, customs action, domain name dispute, contract drafting, license, and more. She is well trusted by her clients and is able to provide thoughtful and practical advices.

Lena is active in international forums and academic activities. She is Chair of CET 8 (Asian Issue Group) of FICPI and Assistant Reporter General of AIPPI.

Lena received education in both China and UK and holds an LL.M. degree from Queen Mary, University of London, in intellectual property law.



Governmental Strategies for Promoting Innovation and IP Protection



Lena Shen

Chair – Work & Study Commission, **Group 8 (Asian Issues)**
Partner & Attorney-at-law – **Beijing Sanyou IP Agency Ltd. (CN)**

November 22, 2019



2008 国家知识产权战略纲要
National Intellectual Property Strategy Compendium

By 2020, China shall be built into a country highly capable in terms of the creation, application, protection and management of IPR

2010
《中国造：从中国制造到中国创造》
From Made in China to Made by China

2011
Beijing Spirit 爱国、创新、包容、厚德
patriotism, **innovation**, tolerance and social morals

2014
Mr. Xi: 大众创业 万众创新
Widespread Entrepreneurship and Innovation

2019 ongoing
制定国家知识产权强国战略纲要
To make the National Strategy Compendium on Construction of a strong country in intellectual property

2019: 优化营商环境条例

Regulations on Optimizing Business Environment

Article 15 The State establishes a system of punitive compensation for intellectual property right infringements, promotes the establishment of a mechanism for rapid and coordinated protection of intellectual property rights, improves the diversified settlement mechanism of intellectual property right disputes and the assistance mechanism for safeguarding intellectual property rights, and strengthens the protection of intellectual property rights. The State continues to deepen the reform to facilitate trademark registration and patent application, so as to improve the efficiency of trademark registration and patent application review.



2008

国家知识产权战略纲要

National Intellectual Property Strategy Compendium

By 2020, China shall be built into a country highly capable in terms of the creation, application, protection and management of IPR

What is to achieve

1. The IPR system shall be improved
2. IPR creation and application shall be facilitated
3. IPR protection shall be strengthened
4. IPR abuse shall be prevented
5. An IPR culture shall be cultivated

CNIPA commissioner

Mr. Shen Changyu:

2019年，围绕加强知识产权保护，国家知识产权局着力抓好制定知识产权强国战略纲要、制定实施知识产权保护体系建设方案、完善知识产权法律法规、加强知识产权源头保护以及创新知识产权保护机制等5项主要工作。

In 2019, focusing on strengthening the protection of intellectual property rights, the China National Intellectual Property Administration will focus on five major tasks: 1. formulating the strategic compendium of strengthening the country with intellectual property rights, 2. formulating and implementing the construction scheme of intellectual property protection system, 3. improving intellectual property laws and regulations, 4. strengthening the protection of intellectual property sources, and 5. innovating intellectual property protection mechanism.



Some measures taken by China to encourage innovation

- **1. Reducing the application fee for individual, small entity and non-profit organizations**
- **2. Benefits granted to High and New Technology Enterprises**
- **3. Financial support for patent application and other related need**
- **4. Reward to individuals (patentees, inventors, talents)**



Some measures taken by China to encourage innovation

1. Reducing the application fee for individual, small entity and non-profit organizations

Measures for Reduction in Patent Charges (amended in 2019)

Article 2 A patent applicant or patentee may apply for reduction in the following patent charges:

- (1) Application fees (excluding the printing fee for publication and additional application fee);
- (2) Substantive examination fee for invention patent application;
- (3) Annual fee (the annual fee within **ten** years from the year of the grant of the patent right); and
- (4) Reexamination fee.

Article 3 A patent applicant or patentee that meets any of the following conditions may apply to the State Intellectual Property Office (“SIPO”) for reduction in the above charges:

- (1) An individual whose average monthly income in the last year is less than RMB **5,000** (RMB **60,000** annually);
- (2) An enterprise of which taxable income in the last year is less than RMB **100,000**; or
- (3) A public institution, social group or nonprofit scientific research institute.

Where a co-patent applicant or co-patentee includes two or more individuals or entities, such individuals or entities shall respectively comply with the provisions in the preceding paragraph.

Article 4 A patent applicant or patentee that is an individual or entity shall pay the fees specified in Article 2 hereof at a reduced rate of 85%.

A co-patent applicant or co-patentee including two or more individuals or entities shall pay the fees specified in Article 2 hereof at a reduced rate of 70%.



Some measures taken by China to encourage innovation

1. Reducing the application fee for individual, small entity and non-profit organizations

	Standard official fee (CNY)	Official fee after 85% discount (CNY)
Filing fee for invention (excluding additional fee for extra claims and specification)	950	185
Substantive examination fee for invention	2500	375
Utility model	500	75
Design	500	75



Some measures taken by China to encourage innovation

2. Benefits granted to High and New Technology Enterprises

Administrative Measures for Recognition of High and New Technology Enterprises (2016)

Article 11 An enterprise must satisfy the following requirements simultaneously in order to be recognized as a high and new technology enterprise:

- (1) The enterprise must be an enterprise that has been registered and existed for at least one year when it applies for recognition;
- (2) The enterprises has obtained the ownership to the intellectual property rights that technically play core supporting roles in its major products (services) by way of independent research and development, acceptance of transfer, acceptance of donation or merger and acquisition, etc.;**
- (3) The technologies that play core supporting roles in the enterprise's main products (services) fall within the range prescribed by **the High and New Technology Sector under the Key Support of the State;**
- (4) The enterprise has the scientific and technological **personnel engaging in research and development** as well as relevant technical innovation activities who account for at least **10%** of the total number of its employees during the current year;
- (5) The proportion of the enterprise's **total research and development expenditure** in its total sales revenue in the corresponding period during the immediately preceding three accounting years (calculated based on the actual time of business if the actual period of business is less than three years, similarly hereinafter) meets the following requirements:
 - (a) The proportion shall not be less than 5% if the sales revenue of the enterprise during the immediately preceding year is less than RMB 50 million (inclusive);
 - (b) The proportion shall not be less than 4% if the sales revenue of the enterprise during the immediately preceding year is between RMB 50 million and RMB 200 million (inclusive);
 - (c) The proportion shall not be less than 3% if the sales revenue of the enterprise during the immediately preceding year is more than RMB 200 million. Specifically, the proportion of the total research and development expenditure of the enterprise incurred within China in the total research and development expenditure is not less than 60%.
- (6) The proportion of the revenue from high and new technology products (services) in the total revenue of the enterprise in the corresponding period during the immediately preceding year is not less than 60%;
- (7) The enterprise's innovation capability evaluation shall meet corresponding requirements; and
- (8) The enterprise has not been involved in the any major safety or major quality accidents or gross violation of environmental laws during the year prior to the application for recognition.



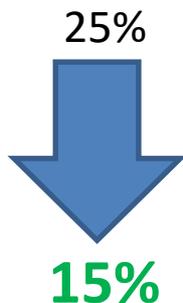
Some measures taken by China to encourage innovation

2. Benefits granted to High and New Technology Enterprises

Law of the People's Republic of China on Enterprise Income Tax

Article 28 The rate of enterprise income tax on eligible small and low-profit enterprises shall be reduced to 20%.

The rate of enterprise income tax on high and new technological enterprises needing special support of the State shall be reduced to **15%**.



High and New Technology Sectors

1. Electronic information (电子信息)
2. Biology and new medicine (生物与新医药)
3. Aerospace (航空航天)
4. new materials (新材料)
5. high tech services (高技术服务)
6. new energy and energy conservation (新能源与节能)
7. Resources and environment (资源与环境)
8. Advanced manufacturing and automation (先进制造与自动化)



Some measures taken by China to encourage innovation

3. Financial support for patent application and other related need

Some examples among many

Area	Who can apply for the financial support	How much support
Beijing	entities that are registered in the area or the individuals that possess work and residence permits in the area	1. Domestic patent: ▶ Invention: entity CNY 1500+1000; individual CNY 1000+1000/patent <u><i>In total, no more than CNY 2 million per year for an entity; CNY 100,000 for an individual.</i></u> 2. Foreign patent: ▶ invention US/EU/JP: ≤CNY 20,000/country, other countries, ≤CNY 10,000/country; in total, no more than 5 countries for each invention <u><i>In total, no more than CNY 2 million per year for an entity; CNY 100,000 for an individual.</i></u>
Zhongguancun Area of Haidian District of Beijing	New and High Tech enterprise registered in the area or other organizations with main activities or members in the area	1. Domestic patent: ▶ Invention: CNY 5000/patent <u><i>In total, no more than CNY 3 million per year for an entity.</i></u> 2. Foreign patent: ▶ Invention: CNY 30,000/patent <u><i>In total, no more than CNY 3 million per year for an entity.</i></u> 3. Entity winning China patent award ▶ CNY 100,000/300,000 for each award 4. Leading entity for their patent operation cost (strategy making, information search, patent monitor and warning, patent enforcement, etc.) ▶ ≤CNY 2 million (meanwhile no more than half of the actual cost) 5. Etc.
Luohu District of Shenzhen, Guangdong province	entities that are registered in the area or the individuals that possess work and residence permits in the area	1. Domestic patent: ▶ invention: CNY 10,000/patent 2. Foreign patent: ▶ invention US/EU/JP: CNY 30,000/country, other countries, CNY 20,000/country; in total, no more than 2 countries for each invention.



Some measures taken by China to encourage innovation

4. Reward to individuals (patentees, inventors, talents)

(1) reward and remuneration for inventors

Patent Law of China

Article 16 The organization that is granted the patent right shall reward the inventor or designer of a service invention. After such invention patent is exploited, the inventor or designer shall be given reasonable reward according to the scope of application and the resulting economic benefit.

Rules for the Implementation of the Patent Law of China

Article 77 Where entities that are granted the patent right fail to agree with inventors and/or designers upon or fail to provide in the rules and regulations thereof established by law the method and amount of reward and/or remuneration prescribed by Article 16 of the Patent Law, the said entities shall give monetary awards to the inventors or designers within three (3) months upon the date of announcement of the patent right. The monetary award for one(1) invention patent shall be a minimum of RMB 3,000; and that for one(1) utility model patent or one (1) design patent shall be a minimum of RMB 1,000. Where inventions are accomplished as the suggestions of the inventors or designers are adopted by the entities to which they belong, the entities that are granted the patent right shall favorably give monetary awards.

Article 78 Where entities that are granted the patent right fail to agree with inventors and/or designers upon or fail to provide in the rules and regulations thereof established by law the method and amount of remuneration prescribed by Article 16 of the Patent Law, after exploitation of the invention patents within the term of validity of the patent right, the said entities shall, each year, withdraw not less than 2% of the operating profit from the exploitation of the invention or utility model patents or not less than 0.2% of the operating profit from the exploitation of the design patents as remuneration for the inventors or designers, or shall, in light of the above percentage, give the inventors or designers one-off compensation; where entities that are granted the patent right license other entities or individuals to exploit its patents, the said entities shall give not less than 10% of the royalties collected as remuneration for the inventors or designers.



Some measures taken by China to encourage innovation

4. Reward to individuals (patentees, inventors, talents)

(2) To attract and reward high level talents



千人计划
(海外高层次人才引进计划)
"1000 Talents Plan"
(The Recruitment Program of Global Expert)



百人计划
"100 Talents Plan"
initiated by Chinese Academy of Sciences"



国家杰出青年科学基金
The National Science Fund for Distinguished Young Scholars





Some measures taken by China to encourage innovation

4. Reward to individuals (patentees, inventors, talents)

(3) Patent helps to earn residency

Beijing

invention patent: up to +12 points for the patentee

Shanghai

students in universities who attend research program of the university and make invention may be given +5 points

Shenzhen

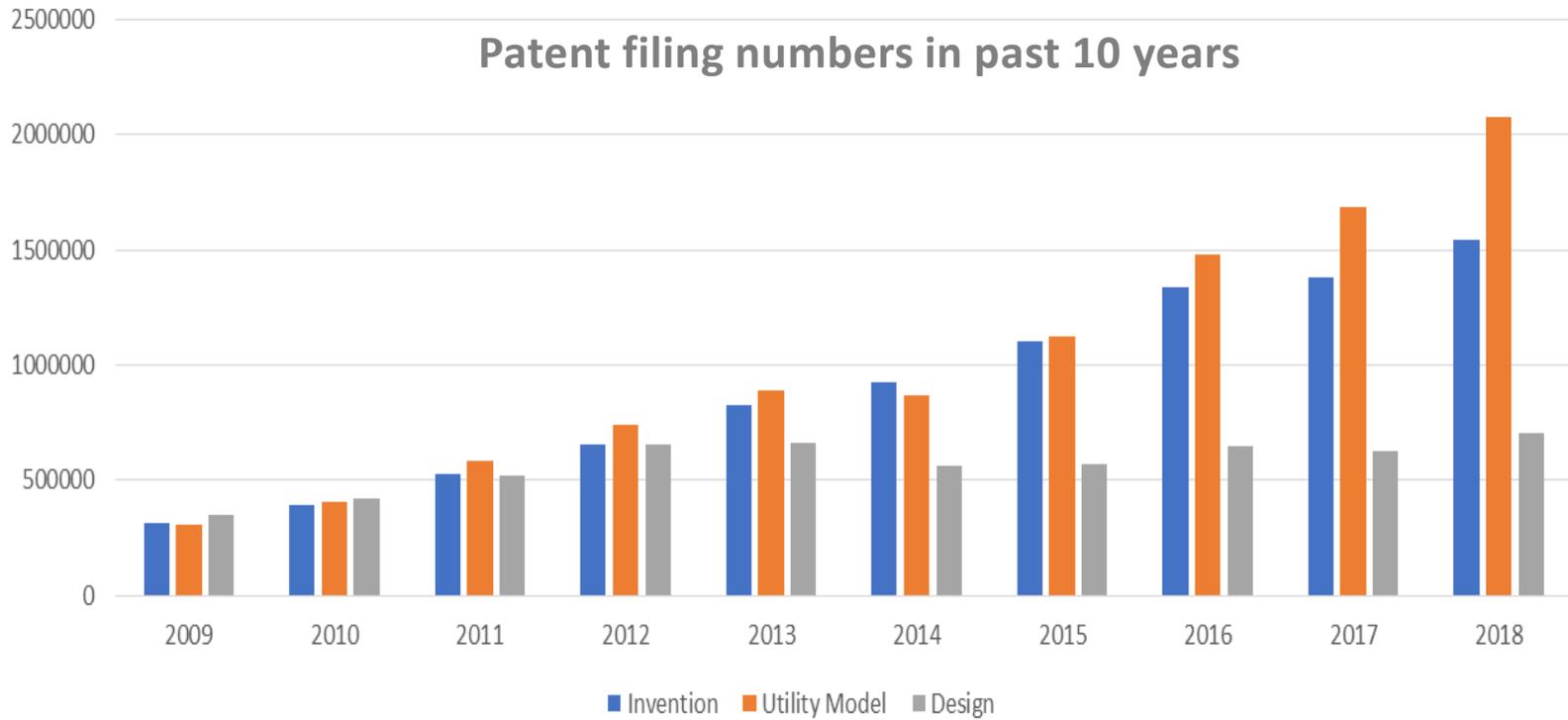
each invention patent: patentee +50 points ;
inventor +10 points

Xi'an

Talents with special technical skill who owns patents may get the residency directly



Patent Filing in China

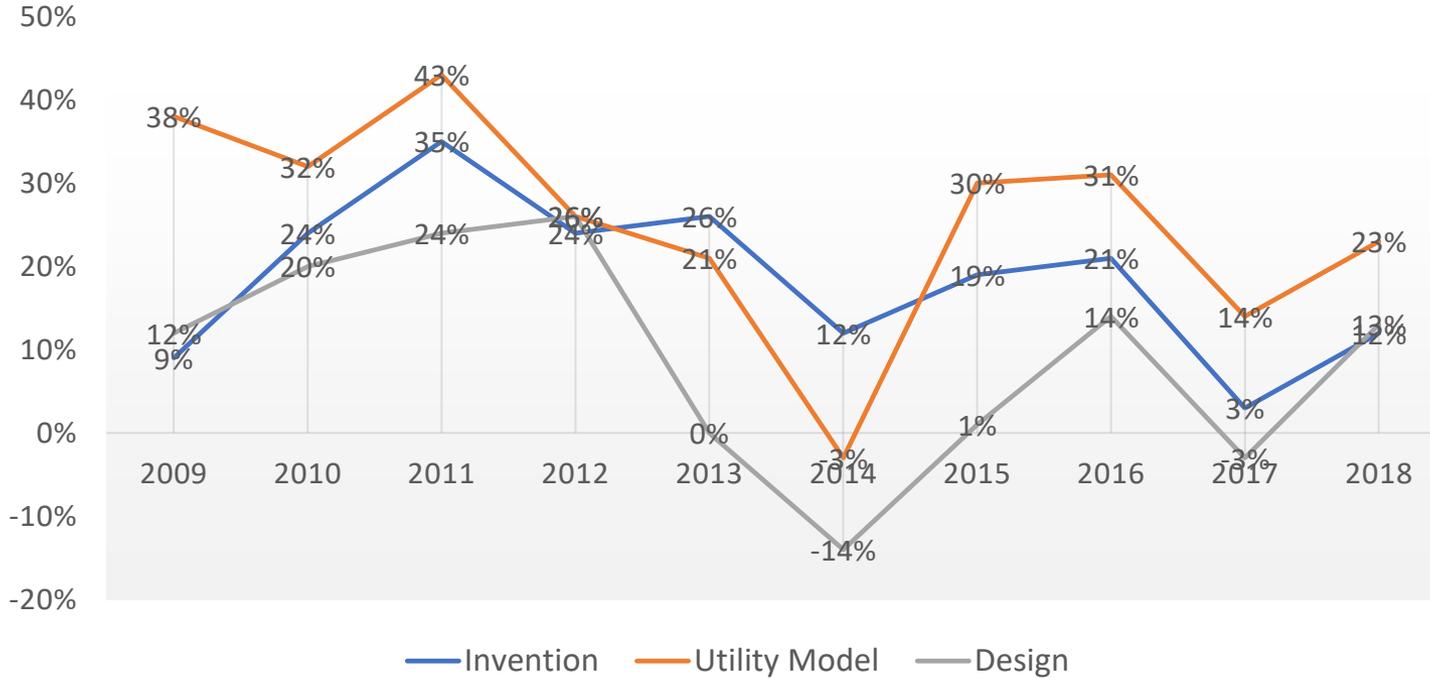


	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Invention	314573	391177	526412	652777	825136	928177	1101864	1338503	1381594	1542002
Utility Model	310771	409836	585467	740290	892362	868511	1127577	1475977	1687593	2072311
Design	351342	421273	521468	657582	659563	564555	569059	650344	628658	708799



Patent Filing in China

INCREASING RATES OF PATENT FILINGS

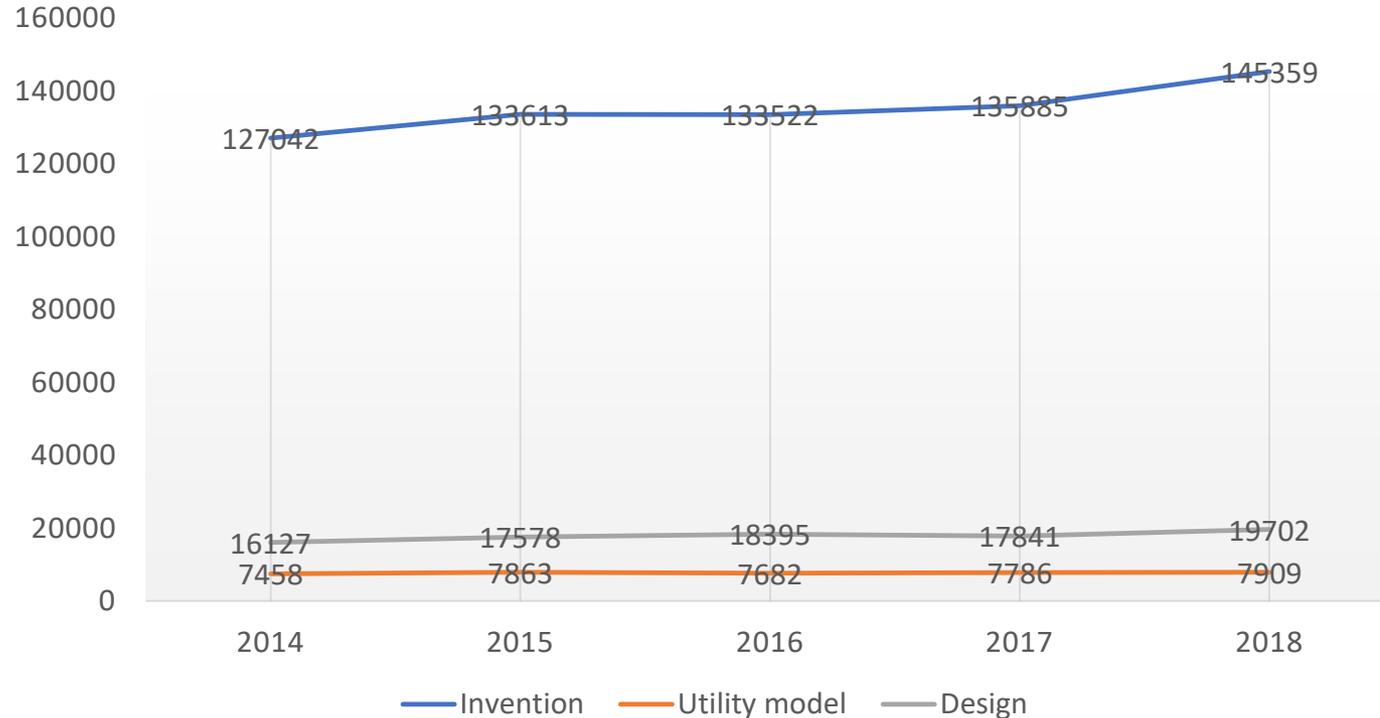


	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Invention	9%	24%	35%	24%	26%	12%	19%	21%	3%	12%
Utility Model	38%	32%	43%	26%	21%	-3%	30%	31%	14%	23%
Design	12%	20%	24%	26%	0%	-14%	1%	14%	-3%	13%



Patent Filing in China

PATENT FILINGS IN CHINA BY FOREIGN APPLICANTS

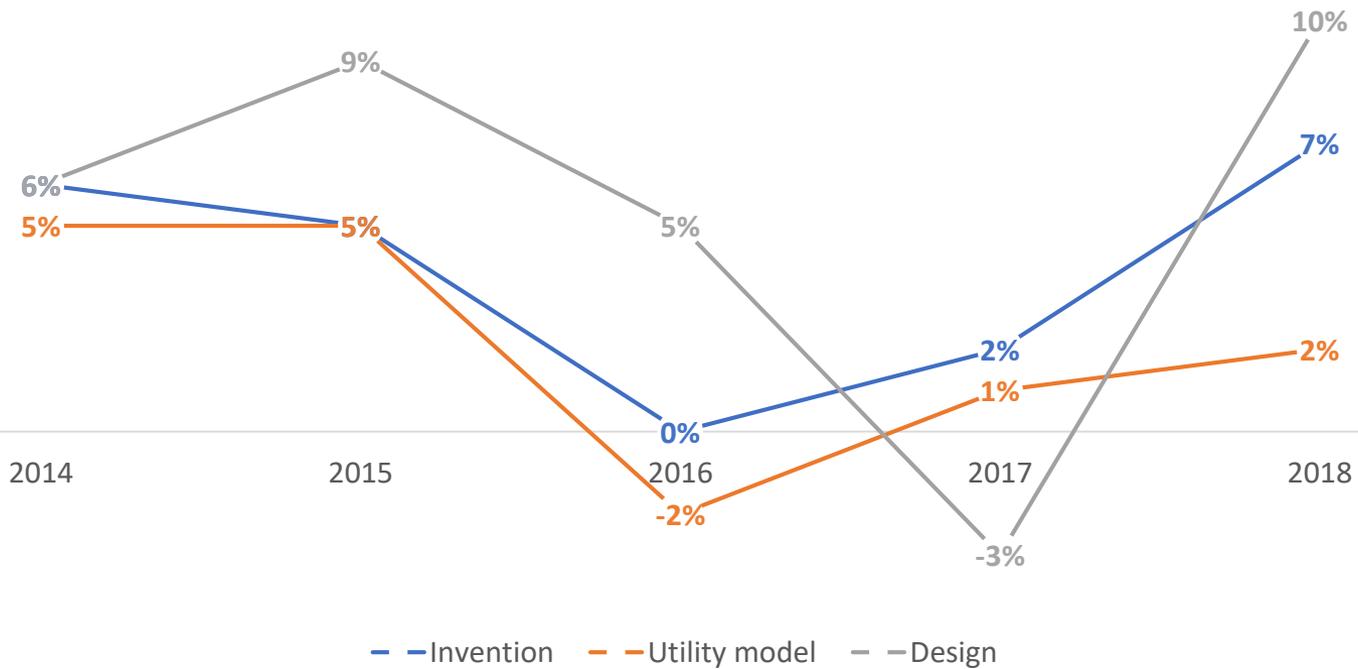


	2014	2015	2016	2017	2018
Invention	127042	133613	133522	135885	145359
Utility Model	7458	7863	7682	7786	7909
Design	16127	17578	18395	17841	19702



Patent Filing in China

INCREASING RATES OF PATENT FILINGS IN CHINA BY FOREIGN APPLICANTS





Questions?

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Session 6: Governmental Strategies for Promoting Innovation and IP Protection: Singapore

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Patentanwalt in Germany
European Patent Attorney
Patent Attorney in Singapore

Helped FICPI a lot to organize this seminar in Singapore





Intellectual Property Office of Singapore

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Ideas Today. Assets Tomorrow.

ACTING FOR THE IP PROFESSION WORLD WIDE



Intangible assets are key to capturing value in the digital economy

Value capture across the production chain



Designs

\$318bn

World exports of design in 2015

Trade Secrets



\$200-550bn

Estimated value of trade secret losses per year in the US

Data



\$3 trillion

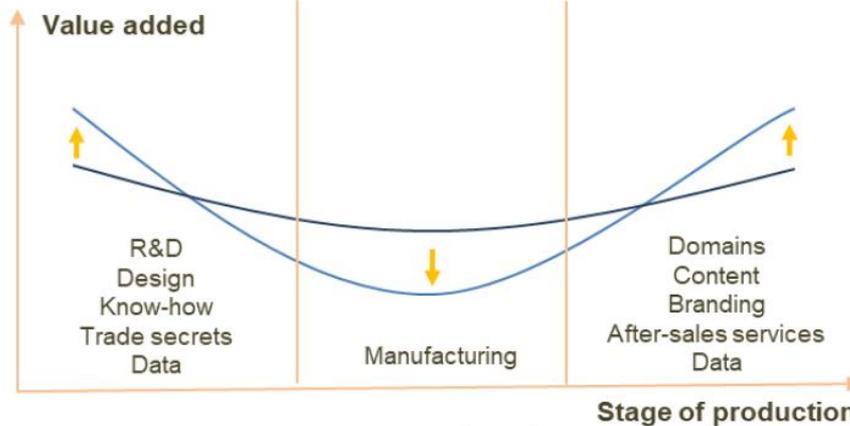
Value of the global data economy

Brands



\$560bn

Estimated global advertising spend in 2019



amazon

\$188bn

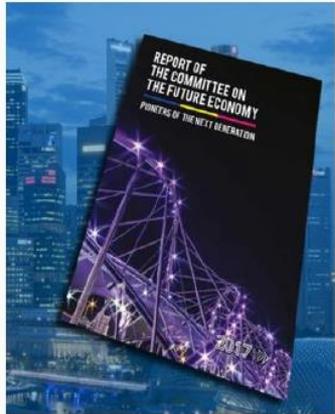
Amazon's brand value in 2019

Source: WIPO, UNCTAD, Baker McKenzie, WEF, Statista, Brand Finance



Supporting Singapore's future innovation economy – CFE and IP Hub Masterplan

COMMITTEE ON THE
FUTURE ECONOMY 



- a) Strengthen our **national capabilities to commercialise IP** from institutes of higher learning and other research performers.
- b) **Grow community** of IP and commercialisation experts.
- c) Develop a **standardised IP protocol**.
- d) **Update IP Hub Master Plan** to support innovation and entrepreneurship.
- e) Review Singapore's **Copyright regime**.

Singapore IP Hub Master Plan – Update (2017)

- 1 Skilled IP Manpower**
- 2 Improve IP & Innovation Regime**
- 3 Create An Effective Innovation Ecosystem**



IPOS: Driving and maintaining a top class IP regime, finding the right balance



Maintain good international rankings
(E.g., Singapore's strong GII rankings)
Balanced with public interests



Singapore's Copyright review
Support creators, enhance access to works

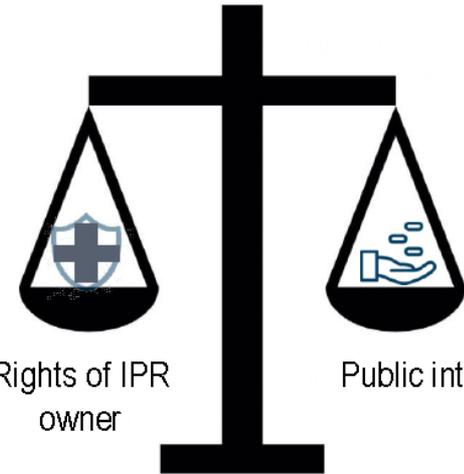


IP Dispute Resolution review
Ensure time- and cost- effective dispute resolution



Maintain pro-innovation IP registry
E.g., World's first mobile trade mark filing app,
FinTech Fast Track and Artificial Intelligence (AI²)
initiative

"Goldilocks zone"



Rights of IPR
owner

Public interest



IPOS: Building IP and intangible assets skills and expertise



Launched national-level skills framework for the IP sector

Provides **structured pathway** for the up-skilling of IP Professionals

Supported by **SkillsFuture Study Awards**



Trained over 4,500 trainees through skills-based courses

Delivered around **140** IP courses
MOE-accredited practice-oriented courses to upskill IP professionals

Specialist Certificate in IA Management
Launched in Jan 2019



Setting Standards

Working on standards and accreditation for IP Strategy and IP Management



Building multi-lingual skillsets

Master of IP and Innovation Management (MIPIM)
Growing enrolment
(from 17 students in 2017 to 29 in 2019)

Developing professional certifications for IP & Innovation with NUS SCALE



IPOS: Bringing value to global innovation flows through our international connectivity



SINGAPORE

Global Patent Prosecution Highway (PPH)

- Global (25 countries)
- Bilateral (China, EPO, Mexico)

ASEAN Patent Examination Co-operation (ASPEC)

Brunei Cambodia Indonesia Laos
 Malaysia Philippines Thailand
 Vietnam (9 countries)

Patent Recognition

Cambodia



Recognised Patent International Searching & Examining Authority (ISA/IPEA)

Brunei Cambodia Indonesia Japan Mexico
 Thailand USA Vietnam (8 countries)



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Tech-specific acceleration programmes



Fintech Fast Track (FTFT)

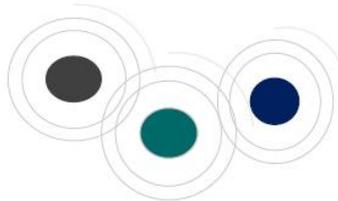


Accelerated Initiative for Artificial Intelligence (AI²)



ASPEC AIM (Industry 4.0 inventions)

Early certainty for patent protection

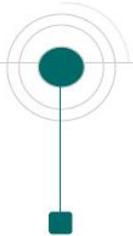


Speed to market (6 months file-to-grant)

Launchpad to global patent protection



IPOS Go



2019

Mobile App

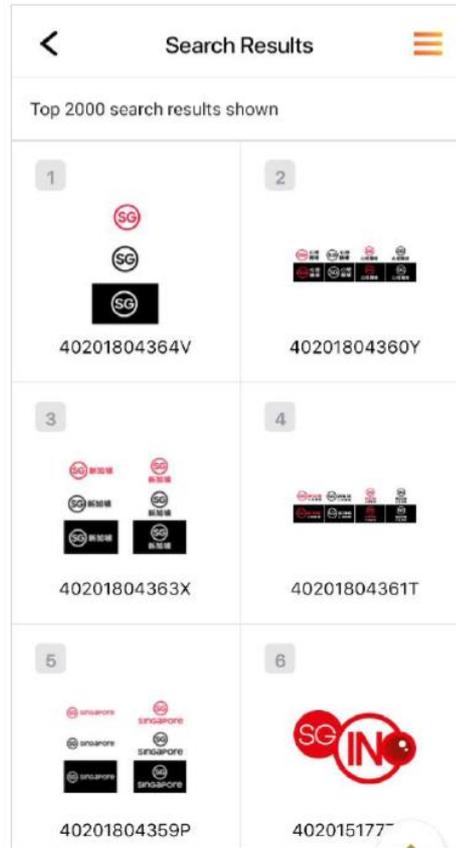
(> 1,000 downloads, 50 TM applications within first week of launch)



File a Trade Mark in 10 mins



AI powered Search



File, Renew, Communicate



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ACTING FOR THE IP PROFESSION WORLD WIDE



INTA 2020: April 25-29, 2020

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**HOST CITY SINGAPORE =
THRIVING GLOBAL FINANCIAL CENTER**

**2nd INTA
Annual Meeting in Asia**

10,000+
registrants

160+
exhibitors

Network

More than
75.5% of 2019
registrants made

10-50+
NEW CONTACTS

Learn

300+
sessions

- Track of programming in Mandarin over 3 days
- "Doing business in the region" sessions
- Interactive anticounterfeiting workshop



THANK YOU

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ACTING FOR THE IP PROFESSION WORLD WIDE



Session 6: Governmental Strategies for Promoting Innovation and IP Protection: Korea

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Coordinator for Korea of CET 8 (Asian Issues Group), FICPI



Patent and Trademark attorney in South Korea since 2005
focus on the management of intellectual property,
4th revolution technology like AI, IOT and Blockchain.
likes the role of startup incubator and accelerator

Yonsei University, Bachelor of Law and Business (Seoul, Korea), 2006

USC Suzanne Dworak-Peck School of Social Work, 2016

Kaist University, Master of Engineering (M.Eng.), 2016

Northwestern University school of law, Master of Laws, 2016



Governmental Strategies for Promoting Innovation and IP Protection

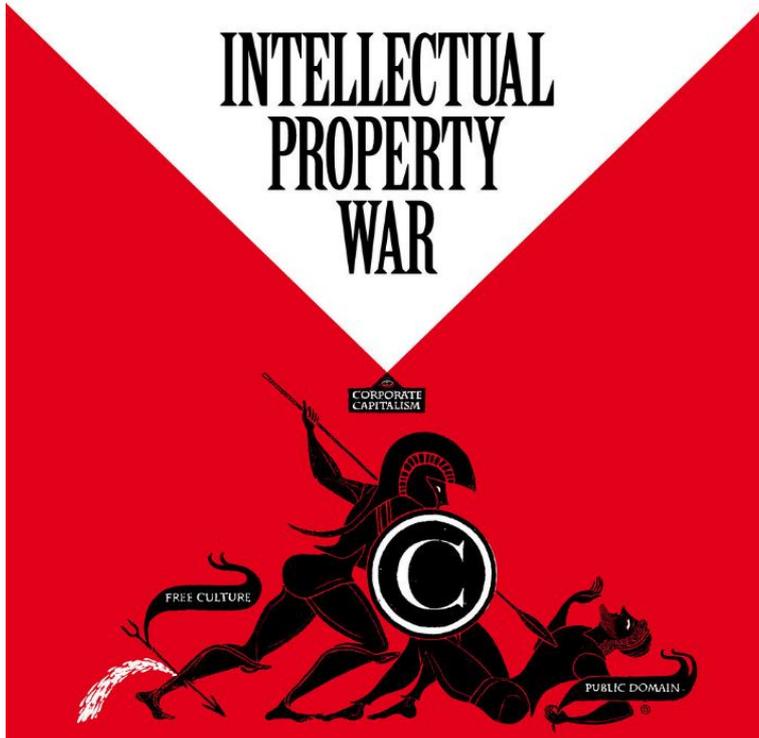
Korean Intellectual Property Office
& Affiliated Agencies



Sungpil-Hwang, Patent Attorney, IP Accelerator



Why, What, How, So What?



WORLD TRADE ORGANIZATION

TRIPS

Trade **Related** Intellectual Property **Rights**



Why, What, How, So What?





The support of KIPO

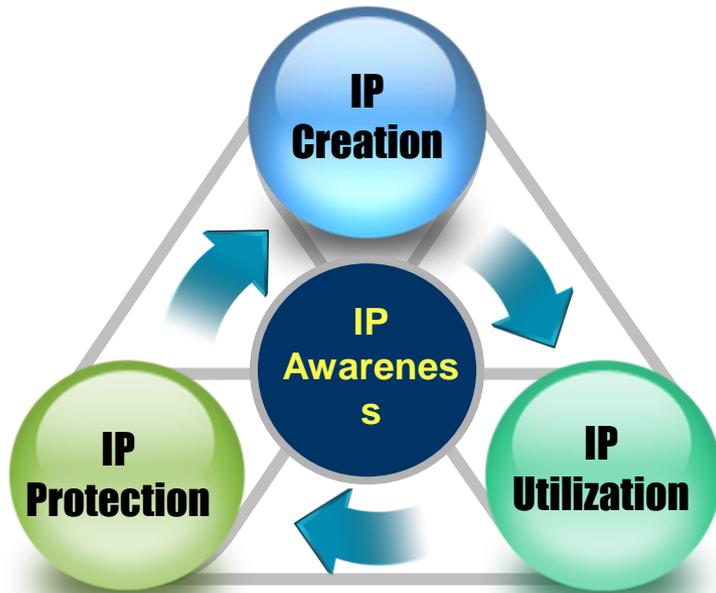


**Korean Intellectual
Property Office**

- ✓ **Management of patents, utility models, trademarks, and designs**
- ✓ **Affairs of Patent Examination & Trial, Creation, Use and Protection of IPRs**
- ✓ **Staff of about 1,600**



The support of KIPO



- ✓ KIPO's revenue budget for 2019 is expected to decrease by 2.8% from 2018 (USD 519,451,585 → USD 504,884,318)
- ✓ KIPO aims to invest in the creation, protection and use of intellectual property. Mainly, the policy to support SMEs and Academic Enterprises in Korea is as follows.

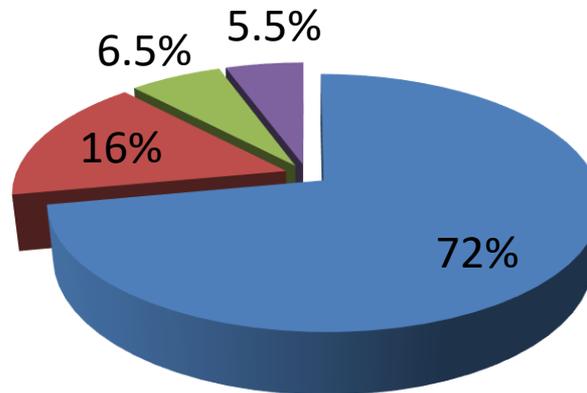


The support of KIPO

2019

■ Examination and others

■ IP Creation



IP creation strategy for Korean SMEs

- Goal: Support the creation of intellectual property to revitalize the domestic industry and enhance intellectual property competitiveness
- Technical Area: IP R&D on the Core 4th Industrial Revolution technology
- Budget: USD 85,000,000



The support of KIPO

Overseas intellectual property dispute resolution for Korean SMEs

- Goal: To resolve disputes involving SMEs' foreign intellectual property rights. Enforcement on Intellectual Property Infringement
- Budget: USD 22,500,000

Expanding support for IP investment

- High-quality patent companies, commercialization of patent technology for academic enterprises, and transaction
- Budget: USD 36,250,000



KIPO & Affiliated Agencies





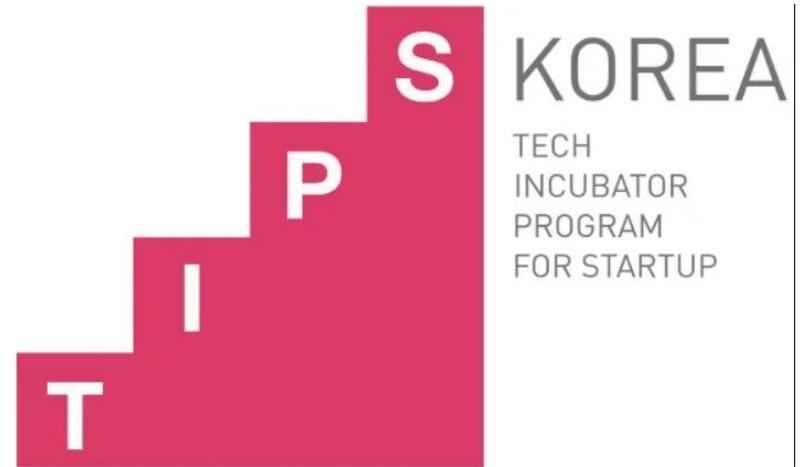
Government Agency

kotra

Korea Trade-Investment
Promotion Agency

kotra NY IP
Desk

Korea Trade-Investment
Promotion Agency





Government Agency



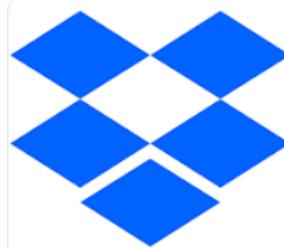


Government Agency



Jeffrey Schox.

Jeffrey Schox is a Patent Attorney and the founding member of **Schox** Patent Group, a boutique patent firm that builds patent portfolios for startups. He represents 100 early stage startups, and a few later stage startups including Facebook, Instagram, and **Dropbox**.





Session 6: Governmental Strategies for Promoting Innovation and IP Protection: Malaysia

Name: Timothy Siaw

Academic education level: B Sc Monash University, Australia;
LL B Monash University, Australia

Firm: Partner,
Shearn Delamore & Co
Kuala Lumpur, Malaysia



Major professional achievements:

Barrister and Solicitor of the Supreme Court of Victoria, Australia (non-practising).

Advocate and Solicitor of the High Court of Malaya

Registered Patent Agent

Tim is a partner in the law firm of Shearn Delamore & Co in Kuala Lumpur. Tim practises exclusively in the areas of IP and Technology laws for over 25 years. He has experience in the drafting of patent specifications and has prosecuted hundreds of patent applications in Malaysia. Tim has acted as leading counsel in IP cases up to the highest court of Malaysia, the Federal Court. He is a contributor to the Malaysian Atkins Court Forms for IP litigation including Patent Litigation.



Governmental Strategies for Promoting Innovation and IP Protection

MALAYSIA

Timothy Siaw

Shearn Delamore & Co

timothy@shearndelamore.com

22 November 2019



MALAYSIA

Population

33.3 million, growth of 1.3% per annum

Ethnic Groups

Bumiputra 68.8%, Chinese 23.2%, Indian 7%, Others 1%

Languages

Bahasa Melayu (Official), English, Chinese (various dialects), Tamil and indigenous

Religions

Islam , Buddhism, Christianity, Hinduism, others



MALAYSIA

Population	33.3 Million
GDP	RM1,530.3 billion
GDP Growth	6.9%
Per Capita Income	RM44,686 (USD10,741)
Inflation Rate (CPI)	2.5 - 3.5%
Labour Force	15.6 million
Unemployment	3.3 %



MALAYSIA

Major Exports Products

- Electrical & electronic Products
- Petroleum Products
- Chemicals & Chemical Products
- LNG
- Palm Oil & Palm Oil Based Agriculture

Major Export Markets

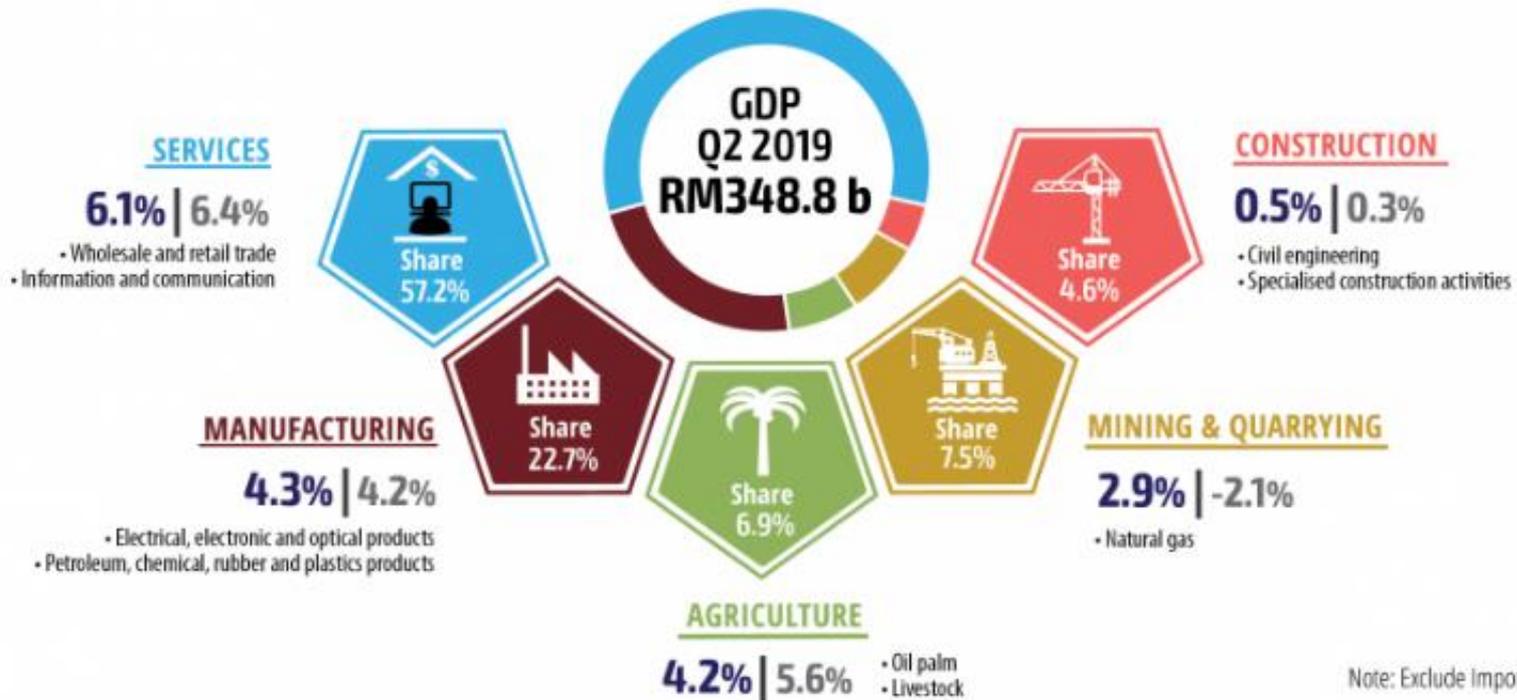
- Singapore
- China
- USA
- Japan
- Hong Kong SAR
- Thailand



Malaysia – 2019 Overview

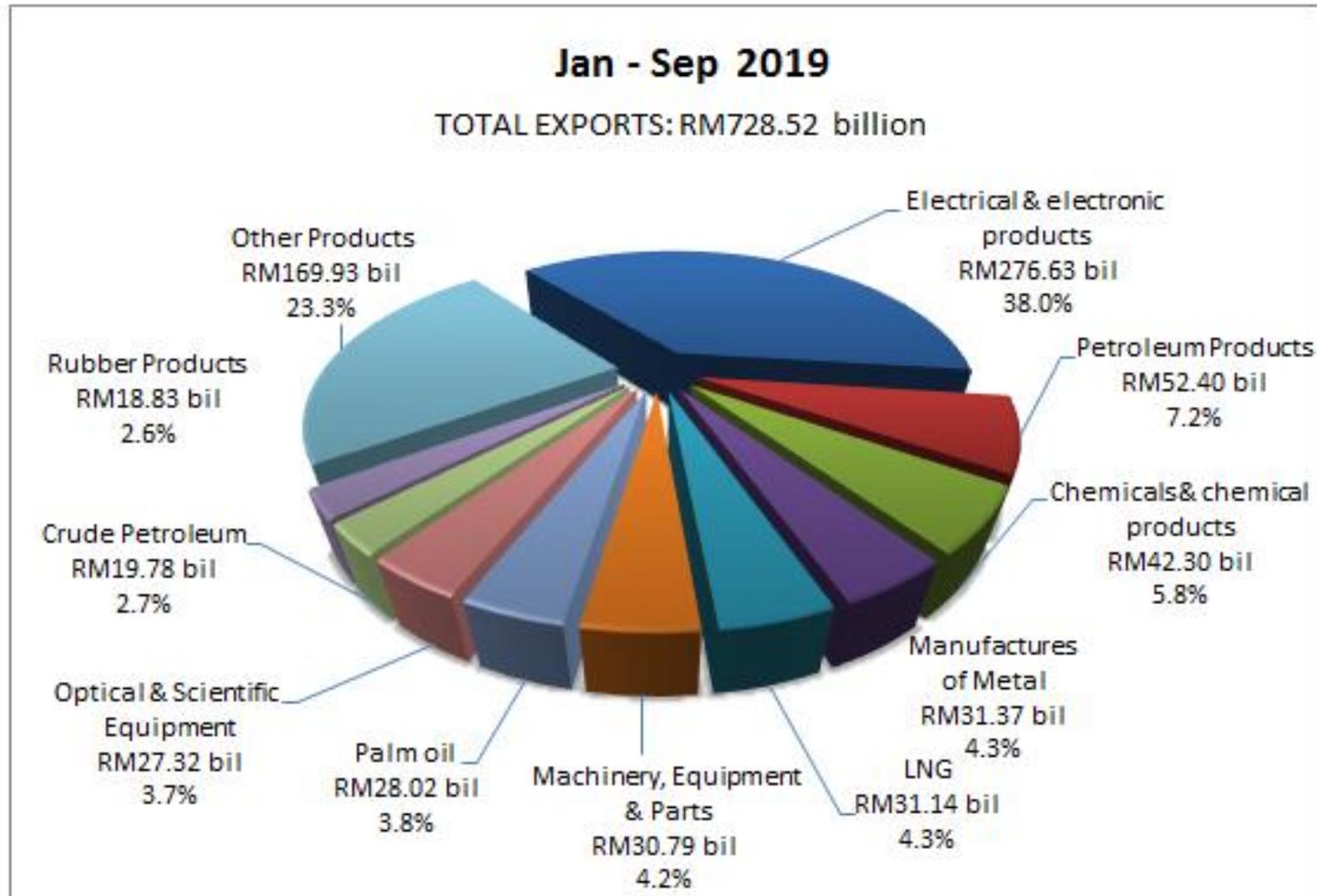
PRODUCTION

Services and Manufacturing sectors anchored the Malaysia's economy



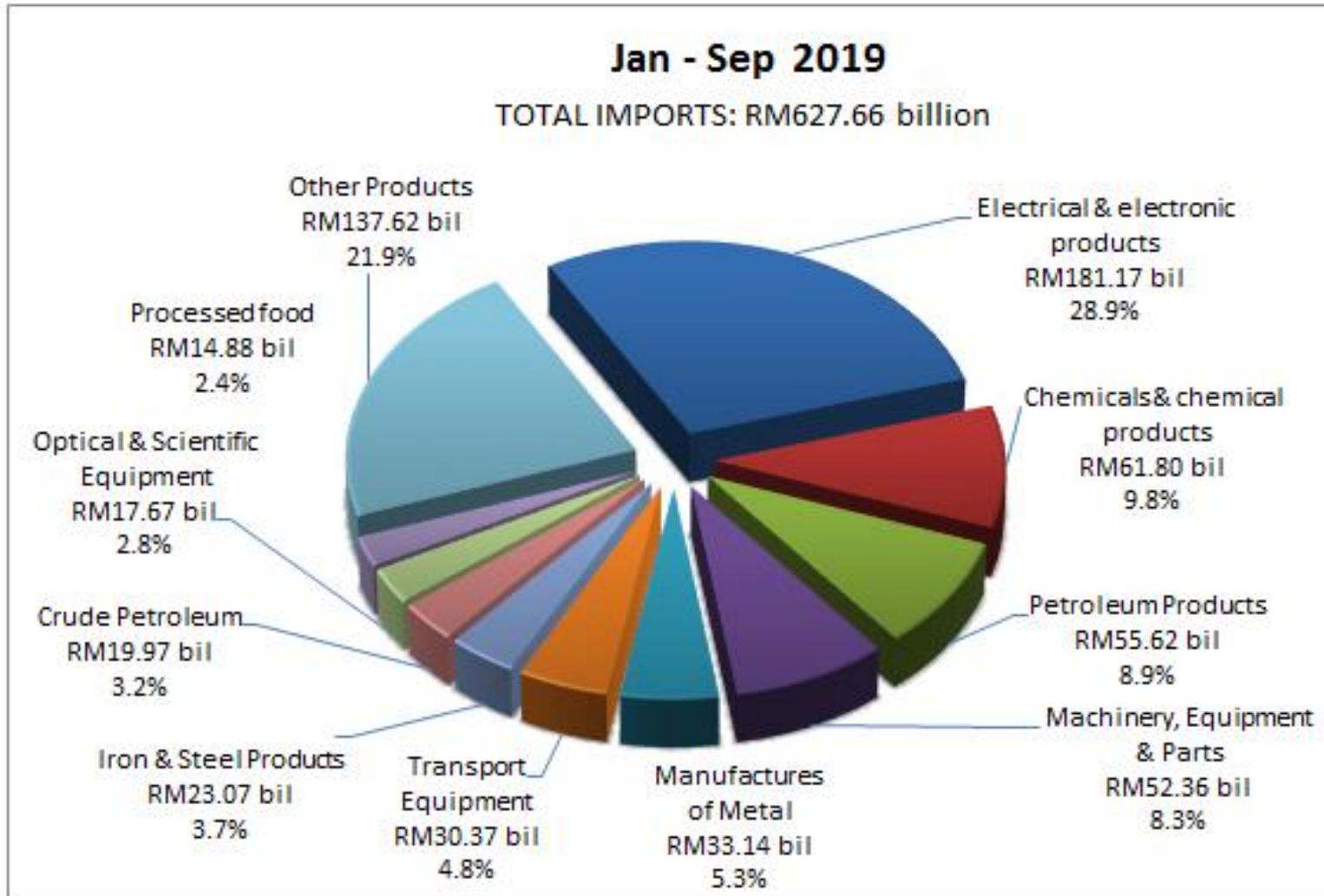


Malaysia – 2019 Overview





Malaysia – 2019 Overview





1st

"World's Best Countries to Invest in or Do Business for 2019"

(CEOWORLD Magazine)

1st

"Most Attractive Emerging Market in Asia"

(Bloomberg's Emerging Market Scorecard, 2018)

2nd

"Ease of Doing Business within ASEAN"

(World Bank's Doing Business Report, 2020)

2nd

"Global Competitiveness among ASEAN Countries"

(World Economic Forum's Global Competitiveness Report, 2019/2020)

5th

"Digital Readiness among Developing Asian Economies"

(UNCTAD's Business to Consumer, B2C, E-Commerce Index, 2018)



Global Innovation Index

MALAYSIA

GII 2019 rank

35

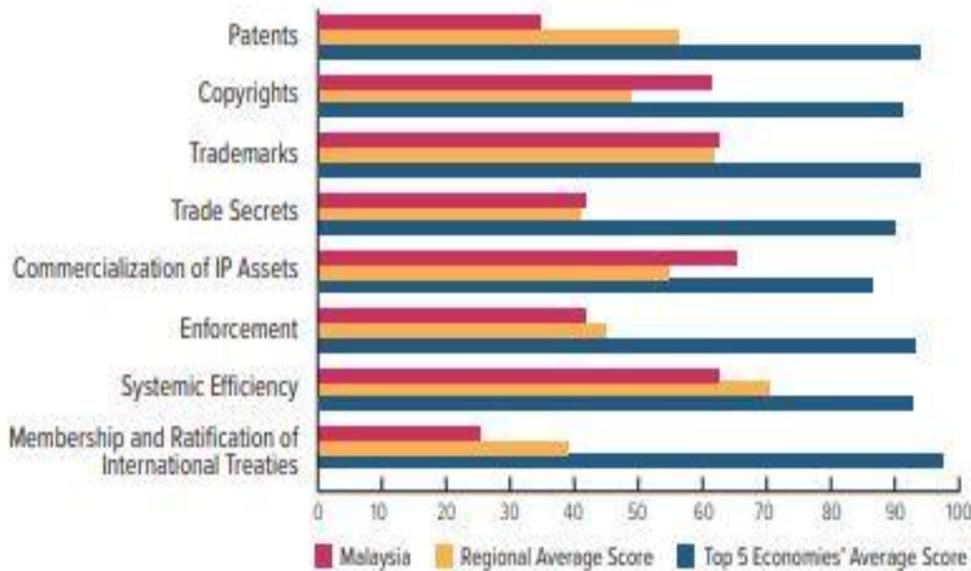
Output rank	Input rank	Income	Region	Population (mn)	GDP, PPP\$	GDP per capita, PPP\$	GII 2018 rank
39	34	Upper middle	SEAO	32.0	999.8	30,859.9	35



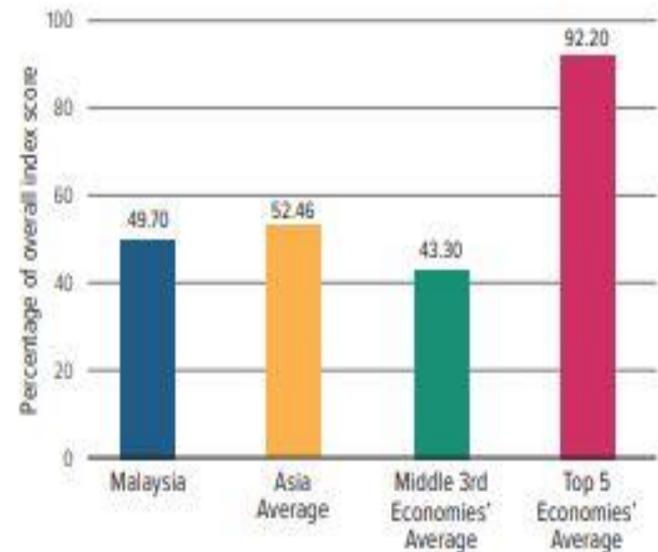
International IP Index 2019

MALAYSIA RANK 24/50

Category Scores



Overall Score in Comparison





International IP Index 2019

Strengths and Weaknesses

KEY AREAS OF STRENGTH

- ✓ New case law that strengthens the customs enforcement environment against infringing goods in-transit
- ✓ Generous R&D and IP-specific tax incentives in place
- ✓ Intellectual Property Corporation of Malaysia (MyIPO) has PPH agreements in place with both the EPO and the JPO
- ✓ Strong focus by the Malaysian government on IP as a commercial asset and technology transfer

KEY AREAS OF WEAKNESS

- ✗ Government use license (the equivalent of a compulsory license) issued in 2017 for sofosbuvir, a new breakthrough medicine to treat hepatitis C
- ✗ *De facto* RDP full term of protection is not offered to new products
- ✗ Patent term restoration not offered



International IP Index 2019

Malaysia dropped from 19th to 23rd place in 2017-2018 following the issuance of a compulsory licence for *sofosbuvir*, a medicine to treat Hepatitis C developed by Gilead Sciences Inc.

Section 84. Rights of Government.

(1) Notwithstanding anything contained in this Act -

(a) where there is national emergency or where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the Government, so requires; or

(b) where a judicial or relevant authority has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive,

the Minister may decide that, even without the agreement of the owner of the patent, a Government agency or a third person designated by the Minister may exploit a patented invention.



Investment Promotion Agencies

- The Malaysian Investment Development Authority (**MIDA**) is the government's principal agency to oversee and drive investment into the manufacturing and services sectors in Malaysia.
- **MIDA** assists companies which intend to invest in the manufacturing and services sectors, as well as facilitates the implementation of their projects. The wide range of services include providing information on the opportunities for investments, as well as facilitating companies which are looking for joint venture partners.



Investment Promotion Agencies

- Apart from **MIDA**, there are several other agencies which offer incentives for investment as well:
 - Malaysia External Trade Development Corporation (**MATRADE**)
 - Malaysian Industrial Development Finance (**MIDF**)
 - Malaysia Digital Economy Corporation (**MDEC**)
 - **InvestKL**
- In Oct 2018, International Trade and Industries Minister has announced plans on putting government agencies tasked with promoting investments under one roof to have a unified body which decides on incentives and perks for investors



Supportive Government Policies

1. Liberal Equity Policy

Since June 2003, foreign investors could hold 100% of the equity in all investments in new projects, as well as investments in expansion / diversification projects by existing companies irrespective of the level of exports and without excluding any product or activity.

2. Employment of Expatriates

Foreign companies in the manufacturing sector are allowed to employ expatriates where certain skills not available in Malaysia. A company with foreign paid-up capital of US\$2 million and above will be allowed up to 10 expatriate posts, including five key posts, that is, posts that are permanently filled by foreigners.

3. Attractive Tax Incentives

The corporate tax rate is 25% and the maximum individual tax rate 26%. Malaysia also offers a wide range of tax incentives for manufacturing projects under the Promotion of Investments Act 1986 and the Income Tax Act 1967.

Main incentives are the Pioneer Status and the Investment Tax Allowance.



Malaysia – Investment Data

APPROVED PRIVATE INVESTMENTS IN VARIOUS ECONOMIC SECTORS, JANUARY - JUNE
2019 & 2018

Summary	Number		Potential Employment		Domestic Investment (RM million) *		Foreign Investment (RM million) *		Total Investment (RM million) *	
	Jan- June 2019	2018	Jan-June 2019	2018	Jan-June 2019	2018	Jan-June 2019	2018	Jan-June 2019	2018
Primary Sector	38	63	443	1,648	1,931.5	4,874.6	1,955.7	6,034.2	3,887.1	10,908.7
Manufacturing Sector	366	721	30,449	59,294	8,035.4	29,353.5	25,114.9	58,022.1	33,150.3	87,375.6
Services Sector	2,150	4,234	28,650	68,792	32,545.0	89,993.5	22,413.2	16,077.2	54,958.2	106,070.7
Total	2,554	5,018	59,542	129,734	42,511.8	124,221.5	49,483.8	80,133.5	91,995.6	204,355.1

Note * : Due to rounding, figures presented in this table may not add up precisely to the totals provided



Budget 2020

- The government will allocate up to RM1bil for customised packaged investment incentives annually over five years to attract **Fortune 500 companies** and **global unicorns** in high technology, manufacturing, creative and new economic sectors.
- Several incentives were proposed to promote high-value added activities in the **electrical and electronics (E&E)** industry to transition into **5G digital economy** and Industry, including income tax exemption up to 10 years to E&E companies investing in selected knowledge-based services.



Budget 2020

- The government is set to establish a ‘special channel’ to specifically cater to **Chinese investors**. The special channel will be managed under **InvestKL**, a government investment promotion agency. Regulations that detail how the special channel will operate are forthcoming.

[\(http://www.investkl.gov.my/\)](http://www.investkl.gov.my/)

- The government will also provide incentives to encourage businesses to implement **automation** in their business processes, and will also allocate 550 million Ringgits (US\$131 million) as grants to help companies in the manufacturing and services sector embrace automation.



Budget 2020

- Further, the government has proposed **5 Action Plans** to further enhance Malaysia's **R&D framework**:
 - Intensifying R&D in the public sector (allocation of RM524 million to Ministries and Public Agencies);
 - Allocation of RM30 million for R&D matching grants for **collaborations** with industry and academia to develop higher value added downstream uses of palm oil
 - Establishing a **Research Management Agency** with an allocation of RM10 million to centralize and coordinate management of public research resources.
 - To establish a **one-stop Innovation Office** to promote commercialization of R&D by the public sector (research universities) and to transform IP into commercially exploitable opportunities
 - IP-generated income based on the **Modified Nexus Approach (MNA)** derived from patents and copyright software to be given tax exemption for a period up to 10 years.



R&D Tax Incentives

- The Malaysian companies are currently availing the tax incentives provided for research and development (R&D) activities:
 - **double deduction** on in-house R&D expenditure approved by the Inland Revenue Board of Malaysia;
 - **double deduction** on R&D contributions to approved research institutions or expenditures for R&D services obtained from approved institutions or research companies;
 - **tax deduction** for cost of acquisition of proprietary rights;
 - income **tax exemption** for companies that commercialise resource based and non-resource based R&D findings; and
 - income **tax exemption** for R&D contract companies that provide R&D services.



R&D Tax Incentives

- It was proposed in Budget 2020 for IP-generated income based on the **Modified Nexus Approach (MNA)** derived from patents and copyright software to be given tax exemption for a period up to 10 years.
 - For computation of this tax exemption, the MNA, as recommended by the Organisation for Economic Cooperation and Development (OECD) will be adopted. As such, the government is likely to consider the following terms, amongst others:
 - Under the MNA, benefit of an IP regime is made conditional on the level of R&D activities undertaken in Malaysia;
 - The OECD has also defined ‘qualifying taxpayer’ to include resident companies, domestic permanent establishments (PEs) of foreign companies, and foreign PEs of resident companies.
 - As a consequence, this would then attract companies to relocate their R&D hubs to Malaysia and commercialise and exploit the resulting IP.



Legislation & Treaties

- Anticipated that Malaysia's new Trade Marks Act 2019 will come into force on 27 December 2019, the same day the Madrid Protocol will be implemented.
- Amongst other things, the key changes include recognition of non-conventional trade marks, introduction of a multi-class application, and introduction of international trademark registration via the Madrid System.



Legislation & Treaties

- Following US' withdrawal from the **Trans-Pacific Partnership Agreement (TPPA)** in 2017, the remaining 11 TPP members reached an agreement on the core elements, the text of the agreement and way forward to implement the TPPA, which was renamed as the **Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP)**.
- The TPP includes new regulation for online commerce, treatment of foreign investors, far more comprehensive protection for intellectual property, labor codes, and an agreement for neutrality regarding state-owned enterprises.
- Despite US' withdrawal, CPTPP is one of the largest free trade agreements in the world, representing nearly 13.5 percent of global gross domestic product (GDP). Most of the original TPP text remains intact, and two-thirds of the CPTPP's 30 chapters are identical to TPP.



Legislation & Treaties

- The CPTPP entered into force on 30 December 2018 for:
 - Australia
 - Canada
 - Japan
 - Mexico
 - New Zealand, and
 - Singapore;and on 14 January 2019 for
 - Vietnam.
- For Malaysia, the International Trade and Industry has commented that more time is needed to assess the clauses as the CPTPP is a complex and comprehensive agreement.



IP & Competition Law

- The MyCC (**Malaysian Competition Commission**) Guidelines on Intellectual Property Rights and Competition Law (“**IPR Guidelines**”) came into force since 6 April 2019.
- The MyCC recognizes the rights of exclusivity granted to owners of intellectual property rights (“IPR”), and is of the view that such rights incentivizes enterprises to be more innovative and competitive, which is in line with the aims of competition law to prohibit or restrain anti-competitive activities.
- The IPR Guidelines clarifies certain instances where arrangements may be viewed as anti-competitive.



IP & Competition Law

Prohibited Vertical Arrangements

- Tying/bundling
- Territorial and field-of-use restrictions
- Exclusive dealings
- Grant-backs

Prohibited Horizontal Arrangements

- Sharing market or sources of supply
- Limiting or controlling certain activities or markets
- Restricting technical or technological development
- Agreements to reduce investment to production or R&D



IP & Competition Law

Prohibitions against abuse of dominant position

- “Dominant position” = one or more enterprises possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors
- Ownership of IPR will not necessarily confer market power upon its owner.
- General examples of abuse of dominant position:
 - i. Post expiration royalty,
 - ii. Non-competition clause
 - iii. Product hopping
 - iv. Refusal to license Standard-Essential Patents (SEP)



Questions?